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Regulation of Investigatory Powers Act 2000

2000 CHAPTER 23

An Act to make provision for and about the interception of communications, the acquisition and disclosure of data relating to communications, the carrying out of surveillance, the use of covert human intelligence sources and the acquisition of the means by which electronic data protected by encryption or passwords may be decrypted or accessed; to provide for Commissioners and a tribunal with functions and jurisdiction in relation to those matters, to entries on and interferences with property or with wireless telegraphy and to the carrying out of their functions by the Security Service, the Secret Intelligence Service and the Government Communications Headquarters; and for connected purposes. [28th July 2000]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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PART I

COMMUNICATIONS

CHAPTER I

INTERCEPTION

Unlawful and authorised interception

1 Unlawful interception.

(1) It shall be an offence for a person intentionally and without lawful authority to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of—
- (a) a public postal service; or
- (b) a public telecommunication system.

(2) It shall be an offence for a person—
- (a) intentionally and without lawful authority, and
- (b) otherwise than in circumstances in which his conduct is excluded by subsection (6) from criminal liability under this subsection,

to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of a private telecommunication system.

(3) Any interception of a communication which is carried out at any place in the United Kingdom by, or with the express or implied consent of, a person having the right to control the operation or the use of a private telecommunication system shall be actionable at the suit or instance of the sender or recipient, or intended recipient, of the communication if it is without lawful authority and is either—
- (a) an interception of that communication in the course of its transmission by means of that private system; or
- (b) an interception of that communication in the course of its transmission, by means of a public telecommunication system, to or from apparatus comprised in that private telecommunication system.

(4) Where the United Kingdom is a party to an international agreement which—
- (a) relates to the provision of mutual assistance in connection with, or in the form of, the interception of communications,
- (b) requires the issue of a warrant, order or equivalent instrument in cases in which assistance is given, and
- (c) is designated for the purposes of this subsection by an order made by the Secretary of State,

it shall be the duty of the Secretary of State to secure that no request for assistance in accordance with the agreement is made on behalf of a person in the United Kingdom to the competent authorities of a country or territory outside the United Kingdom except with lawful authority.

(5) Conduct has lawful authority for the purposes of this section if, and only if—
- (a) it is authorised by or under section 3 or 4;

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(b) it takes place in accordance with a warrant under section 5 ("an interception warrant"); or

(c) it is in exercise, in relation to any stored communication, of any statutory power that is exercised (apart from this section) for the purpose of obtaining information or of taking possession of any document or other property;

and conduct (whether or not prohibited by this section) which has lawful authority for the purposes of this section by virtue of paragraph (a) or (b) shall also be taken to be lawful for all other purposes.

(6) The circumstances in which a person makes an interception of a communication in the course of its transmission by means of a private telecommunication system are such that his conduct is excluded from criminal liability under subsection (2) if—

(a) he is a person with a right to control the operation or the use of the system; or

(b) he has the express or implied consent of such a person to make the interception.

(7) A person who is guilty of an offence under subsection (1) or (2) shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(8) No proceedings for any offence which is an offence by virtue of this section shall be instituted—

(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

Commencement Information

I1 S. 1 wholly in force; S. 1 not in force at Royal Assent see s. 83(2); S. 1 except for subsection (3) in force at 2.10.2000 and S. 1(3) in force at 24.10.2000 by S.I. 2000/2543, **arts. 3**, 4

2 Meaning and location of "interception" etc.

(1) In this Act—

"postal service" means any service which—

(a) consists in the following, or in any one or more of them, namely, the collection, sorting, conveyance, distribution and delivery (whether in the United Kingdom or elsewhere) of postal items; and

(b) is offered or provided as a service the main purpose of which, or one of the main purposes of which, is to make available, or to facilitate, a means of transmission from place to place of postal items containing communications;

"private telecommunication system" means any telecommunication system which, without itself being a public telecommunication system, is a system in relation to which the following conditions are satisfied—

(a) it is attached, directly or indirectly and whether or not for the purposes of the communication in question, to a public telecommunication system; and

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(b) there is apparatus comprised in the system which is both located in the United Kingdom and used (with or without other apparatus) for making the attachment to the public telecommunication system;

"public postal service" means any postal service which is offered or provided to, or to a substantial section of, the public in any one or more parts of the United Kingdom;

"public telecommunications service" means any telecommunications service which is offered or provided to, or to a substantial section of, the public in any one or more parts of the United Kingdom;

"public telecommunication system" means any such parts of a telecommunication system by means of which any public telecommunications service is provided as are located in the United Kingdom;

"telecommunications service" means any service that consists in the provision of access to, and of facilities for making use of, any telecommunication system (whether or not one provided by the person providing the service); and

"telecommunication system" means any system (including the apparatus comprised in it) which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical or electro-magnetic energy.

(2) For the purposes of this Act, but subject to the following provisions of this section, a person intercepts a communication in the course of its transmission by means of a telecommunication system if, and only if, he—

(a) so modifies or interferes with the system, or its operation,

(b) so monitors transmissions made by means of the system, or

(c) so monitors transmissions made by wireless telegraphy to or from apparatus comprised in the system,

as to make some or all of the contents of the communication available, while being transmitted, to a person other than the sender or intended recipient of the communication.

(3) References in this Act to the interception of a communication do not include references to the interception of any communication broadcast for general reception.

(4) For the purposes of this Act the interception of a communication takes place in the United Kingdom if, and only if, the modification, interference or monitoring or, in the case of a postal item, the interception is effected by conduct within the United Kingdom and the communication is either—

(a) intercepted in the course of its transmission by means of a public postal service or public telecommunication system; or

(b) intercepted in the course of its transmission by means of a private telecommunication system in a case in which the sender or intended recipient of the communication is in the United Kingdom.

(5) References in this Act to the interception of a communication in the course of its transmission by means of a postal service or telecommunication system do not include references to—

(a) any conduct that takes place in relation only to so much of the communication as consists in any traffic data comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of any postal service

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or telecommunication system by means of which it is being or may be transmitted; or

(b) any such conduct, in connection with conduct falling within paragraph (a), as gives a person who is neither the sender nor the intended recipient only so much access to a communication as is necessary for the purpose of identifying traffic data so comprised or attached.

(6) For the purposes of this section references to the modification of a telecommunication system include references to the attachment of any apparatus to, or other modification of or interference with—

(a) any part of the system; or

(b) any wireless telegraphy apparatus used for making transmissions to or from apparatus comprised in the system.

(7) For the purposes of this section the times while a communication is being transmitted by means of a telecommunication system shall be taken to include any time when the system by means of which the communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it.

(8) For the purposes of this section the cases in which any contents of a communication are to be taken to be made available to a person while being transmitted shall include any case in which any of the contents of the communication, while being transmitted, are diverted or recorded so as to be available to a person subsequently.

(9) In this section "traffic data", in relation to any communication, means—

(a) any data identifying, or purporting to identify, any person, apparatus or location to or from which the communication is or may be transmitted,

(b) any data identifying or selecting, or purporting to identify or select, apparatus through which, or by means of which, the communication is or may be transmitted,

(c) any data comprising signals for the actuation of apparatus used for the purposes of a telecommunication system for effecting (in whole or in part) the transmission of any communication, and

(d) any data identifying the data or other data as data comprised in or attached to a particular communication,

but that expression includes data identifying a computer file or computer program access to which is obtained, or which is run, by means of the communication to the extent only that the file or program is identified by reference to the apparatus in which it is stored.

(10) In this section—

(a) references, in relation to traffic data comprising signals for the actuation of apparatus, to a telecommunication system by means of which a communication is being or may be transmitted include references to any telecommunication system in which that apparatus is comprised; and

(b) references to traffic data being attached to a communication include references to the data and the communication being logically associated with each other;

and in this section "data", in relation to a postal item, means anything written on the outside of the item.

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(11) In this section "postal item" means any letter, postcard or other such thing in writing as may be used by the sender for imparting information to the recipient, or any packet or parcel.

3 Lawful interception without an interception warrant.

(1) Conduct by any person consisting in the interception of a communication is authorised by this section if the communication is one which, or which that person has reasonable grounds for believing, is both—

(a) a communication sent by a person who has consented to the interception; and

(b) a communication the intended recipient of which has so consented.

(2) Conduct by any person consisting in the interception of a communication is authorised by this section if—

(a) the communication is one sent by, or intended for, a person who has consented to the interception; and

(b) surveillance by means of that interception has been authorised under Part II.

(3) Conduct consisting in the interception of a communication is authorised by this section if—

(a) it is conduct by or on behalf of a person who provides a postal service or a telecommunications service; and

(b) it takes place for purposes connected with the provision or operation of that service or with the enforcement, in relation to that service, of any enactment relating to the use of postal services or telecommunications services.

(4) Conduct by any person consisting in the interception of a communication in the course of its transmission by means of wireless telegraphy is authorised by this section if it takes place—

(a) with the authority of a designated person under **[**[F1]section 48 of the Wireless Telegraphy Act 2006 (interception and disclosure of wireless telegraphy messages)**]** ; and

(b) for purposes connected with anything falling within subsection (5).

(5) Each of the following falls within this subsection—

[[F2](a) the grant of wireless telegraphy licences under the Wireless Telegraphy Act 2006;**]**

(b) the prevention or detection of anything which constitutes interference with wireless telegraphy; and

(c) the enforcement of

[[F3](i) any provision of Part 2 (other than Chapter 2 and sections 27 to 31) or Part 3 of that Act, or

(ii) any enactment not falling within sub-paragraph (i)**]**

that relates to such interference.

Textual Amendments

F1 Words in s. 3(4)(a) substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 123, 126, **Sch. 7 para. 22(2)**

F2 S. 3(5)(a) substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 123, 126, **Sch. 7 para. 22(3)(a)**

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F3 Words in s. 3(5)(c) substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 123, 126, **Sch. 7 para. 22(3)(b)**

4 Power to provide for lawful interception.

(1) Conduct by any person ("the interceptor") consisting in the interception of a communication in the course of its transmission by means of a telecommunication system is authorised by this section if—

(a) the interception is carried out for the purpose of obtaining information about the communications of a person who, or who the interceptor has reasonable grounds for believing, is in a country or territory outside the United Kingdom;

(b) the interception relates to the use of a telecommunications service provided to persons in that country or territory which is either—

(i) a public telecommunications service; or

(ii) a telecommunications service that would be a public telecommunications service if the persons to whom it is offered or provided were members of the public in a part of the United Kingdom;

(c) the person who provides that service (whether the interceptor or another person) is required by the law of that country or territory to carry out, secure or facilitate the interception in question;

(d) the situation is one in relation to which such further conditions as may be prescribed by regulations made by the Secretary of State are required to be satisfied before conduct may be treated as authorised by virtue of this subsection; and

(e) the conditions so prescribed are satisfied in relation to that situation.

(2) Subject to subsection (3), the Secretary of State may by regulations authorise any such conduct described in the regulations as appears to him to constitute a legitimate practice reasonably required for the purpose, in connection with the carrying on of any business, of monitoring or keeping a record of—

(a) communications by means of which transactions are entered into in the course of that business; or

(b) other communications relating to that business or taking place in the course of its being carried on.

(3) Nothing in any regulations under subsection (2) shall authorise the interception of any communication except in the course of its transmission using apparatus or services provided by or to the person carrying on the business for use wholly or partly in connection with that business.

(4) Conduct taking place in a prison is authorised by this section if it is conduct in exercise of any power conferred by or under any rules made under section 47 of the [M1]Prison Act 1952, section 39 of the [M2]Prisons (Scotland) Act 1989 or section 13 of the [M3]Prison Act (Northern Ireland) 1953 (prison rules).

(5) Conduct taking place in any hospital premises where high security psychiatric services are provided is authorised by this section if it is conduct in pursuance of, and in accordance with, any direction given under **[**[F4]section 8 of the National Health Service Act 2006, or section 19 or 23 of the National Health Service (Wales) Act 2006**]**(directions as to the carrying out of their functions by health bodies) to the body providing those services at those premises.

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(6) Conduct taking place in a state hospital is authorised by this section if it is conduct in pursuance of, and in accordance with, any direction given to the State Hospitals Board for Scotland under section 2(5) of the [M4]National Health Service (Scotland) Act 1978 (regulations and directions as to the exercise of their functions by health boards) as applied by Article 5(1) of and the Schedule to The [M5]State Hospitals Board for Scotland Order 1995 (which applies certain provisions of that Act of 1978 to the State Hospitals Board).

(7) In this section references to a business include references to any activities of a government department, of any public authority or of any person or office holder on whom functions are conferred by or under any enactment.

(8) In this section—

"government department" includes any part of the Scottish Administration, a Northern Ireland department and **[**[F5]the Welsh Assembly Government**]**;

"high security psychiatric services" has the same meaning as in **[**[F6]section 4 of the National Health Service Act 2006**]**;

"hospital premises" has the same meaning as in section 4(3) of that Act; and

"state hospital" has the same meaning as in the [M6]National Health Service (Scotland) Act 1978.

(9) In this section "prison" means—

(a) any prison, young offender institution, young offenders centre or remand centre which is under the general superintendence of, or is provided by, the Secretary of State under the [M7]Prison Act 1952 or the [M8]Prison Act (Northern Ireland) 1953, or

(b) any prison, young offenders institution or remand centre which is under the general superintendence of the Scottish Ministers under the [M9]Prisons (Scotland) Act 1989,

and includes any contracted out prison, within the meaning of Part IV of the [M10]Criminal Justice Act 1991 or section 106(4) of the [M11]Criminal Justice and Public Order Act 1994, and any legalised police cells within the meaning of section 14 of the [M12]Prisons (Scotland) Act 1989.

Textual Amendments

F4 Words in s. 4(5) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8, **Sch. 1 para. 208(a)** (with Sch. 3 Pt. 1)

F5 Words in s. 4(8) substituted (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)) by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 1(2)(3), **Sch. 1 para. 76(2)**

F6 Words in s. 4(8) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8, **Sch. 1 para. 208(b)** (with Sch. 3 Pt. 1)

Marginal Citations

M1 1952 c. 52.

M2 1989 c. 45.

M3 1953 c. 18 (N.I.).

M4 1978 c. 29.

M5 S.I. 1995/574.

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M6 1978 c. 29.
M7 1952 c. 52.
M8 1953 c. 18 (N.I.).
M9 1989 c. 45.
M10 1991 c. 53.
M11 1994 c. 33.
M12 1989 c. 45.

5 Interception with a warrant.

(1) Subject to the following provisions of this Chapter, the Secretary of State may issue a warrant authorising or requiring the person to whom it is addressed, by any such conduct as may be described in the warrant, to secure any one or more of the following—

(a) the interception in the course of their transmission by means of a postal service or telecommunication system of the communications described in the warrant;

(b) the making, in accordance with an international mutual assistance agreement, of a request for the provision of such assistance in connection with, or in the form of, an interception of communications as may be so described;

(c) the provision, in accordance with an international mutual assistance agreement, to the competent authorities of a country or territory outside the United Kingdom of any such assistance in connection with, or in the form of, an interception of communications as may be so described;

(d) the disclosure, in such manner as may be so described, of intercepted material obtained by any interception authorised or required by the warrant, and of related communications data.

(2) The Secretary of State shall not issue an interception warrant unless he believes—

(a) that the warrant is necessary on grounds falling within subsection (3); and

(b) that the conduct authorised by the warrant is proportionate to what is sought to be achieved by that conduct.

(3) Subject to the following provisions of this section, a warrant 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 serious crime;

(c) for the purpose of safeguarding the economic well-being of the United Kingdom; or

(d) for the purpose, in circumstances appearing to the Secretary of State to be equivalent to those in which he would issue a warrant by virtue of paragraph (b), of giving effect to the provisions of any international mutual assistance agreement.

(4) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any warrant shall include whether the information which it is thought necessary to obtain under the warrant could reasonably be obtained by other means.

(5) A warrant shall not be considered necessary on the ground falling within subsection (3)(c) unless the information which it is thought necessary to obtain is information relating to the acts or intentions of persons outside the British Islands.

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(6) The conduct authorised by an interception warrant shall be taken to include—

(a) all such conduct (including the interception of communications not identified by the warrant) as it is necessary to undertake in order to do what is expressly authorised or required by the warrant;

(b) conduct for obtaining related communications data; and

(c) conduct by any person which is conduct in pursuance of a requirement imposed by or on behalf of the person to whom the warrant is addressed to be provided with assistance with giving effect to the warrant.

Modifications etc. (not altering text)

C1 S. 5 modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 2** (with art. 6)

C2 S. 5: functions transferred to the Scottish Ministers (S.) (15.12.2000) by virtue of S.I. 2000/3253, arts. 1(1)(3), 3, **Sch. 2** (with art. 6)

C3 S. 5: certain functions modified (9.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), **art. 2**, Sch. 1 para. 1

C4 S. 5: transfer of functions (10.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), art. 3, **Sch. 2**

C5 S. 5 modified (11.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(2), 2, **Sch. 1 para. 1** (with art. 6)

C6 S. 5: functions transferred (12.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(1), 3, **Sch. 2** (with art. 6)

Interception warrants

6 Application for issue of an interception warrant.

(1) An interception warrant shall not be issued except on an application made by or on behalf of a person specified in subsection (2).

(2) Those persons are—

(a) the Director-General of the Security Service;

(b) the Chief of the Secret Intelligence Service;

(c) the Director of GCHQ;

(d) the Director General of the **[**[F7]Serious Organised Crime Agency**]** ;

[[F8](da) the Director General of the Scottish Crime and Drug Enforcement Agency;**]**

(e) the Commissioner of Police of the Metropolis;

(f) the Chief Constable of the Royal Ulster Constabulary;

(g) the chief constable of any police force maintained under or by virtue of section 1 of the [M13]Police (Scotland) Act 1967;

(h) **[**[F9]the Commissioners for Her Majesty's Revenue and Customs**]**;

(i) the Chief of Defence Intelligence;

(j) a person who, for the purposes of any international mutual assistance agreement, is the competent authority of a country or territory outside the United Kingdom.

(3) An application for the issue of an interception warrant shall not be made on behalf of a person specified in **[**[F10]paragraph (a), (b), (c), (e), (f), (g), (h), (i) or (j)**]** subsection (2) except by a person holding office under the Crown.

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Textual Amendments

F7 Words in s. 6(2)(d) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 132(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F8 S. 6(2)(da) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(2)**

F9 Words in s. 6(2)(h) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 6**; S.I. 2008/219, **art. 2(b)**

F10 Words in s. 6(3) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 132(3)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

Modifications etc. (not altering text)

C7 S. 6(2)(h) restricted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 16, 17, 53(1), **Sch. 2 Pt. 1 para. 11(2)(a)**; S. I. 2005/1126, **art. 2(2)(d)**

Marginal Citations

M13 1967 c. 77.

7 Issue of warrants.

(1) An interception warrant shall not be issued except—

(a) under the hand of the Secretary of State **[**[F11]or, in the case of a warrant issued by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), a member of the Scottish Executive**]**; or

(b) in a case falling within subsection (2) **[**[F12](a) or (b)**]**, under the hand of a senior official.

[[F13]; or

(c) in a case falling within subsection (2)(aa), under the hand of a member of the staff of the Scottish Administration who is a member of the Senior Civil Service and who is designated by the Scottish Ministers as a person under whose hand a warrant may be issued in such a case.**]**

(2) Those cases are—

(a) an urgent case in which the Secretary of State has himself expressly authorised the issue of the warrant in that case; and

[[F14](aa) an urgent case in which the Scottish Ministers have themselves (by virtue of provision made under section 63 of the Scotland Act 1998) expressly authorised the use of the warrant in that case and a statement of that fact is endorsed on the warrant; and**]**

(b) a case in which the warrant is for the purposes of a request for assistance made under an international mutual assistance agreement by the competent authorities of a country or territory outside the United Kingdom and either—

(i) it appears that the interception subject is outside the United Kingdom; or

(ii) the interception to which the warrant relates is to take place in relation only to premises outside the United Kingdom.

(3) An interception warrant—

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(a) must be addressed to the person falling within section 6(2) by whom, or on whose behalf, the application for the warrant was made; and

(b) in the case of a warrant issued under the hand of a senior official, must contain, according to whatever is applicable—

(i) one of the statements set out in subsection (4); and

(ii) if it contains the statement set out in subsection (4)(b), one of the statements set out in subsection (5).

(4) The statements referred to in subsection (3)(b)(i) are—

(a) a statement that the case is an urgent case in which the Secretary of State has himself expressly authorised the issue of the warrant;

(b) a statement that the warrant is issued for the purposes of a request for assistance made under an international mutual assistance agreement by the competent authorities of a country or territory outside the United Kingdom.

(5) The statements referred to in subsection (3)(b)(ii) are—

(a) a statement that the interception subject appears to be outside the United Kingdom;

(b) a statement that the interception to which the warrant relates is to take place in relation only to premises outside the United Kingdom.

Textual Amendments

F11 Words in s. 7(1)(a) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 4(a)** (with art. 6)

F12 Words in s. 7(1)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 4(b)** (with art. 6)

F13 S. 7(1)(c) and word immediately preceding it inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 4(c)** (with art. 6)

F14 S. 7(2)(aa) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 4(d)** (with art. 6)

8 Contents of warrants.

(1) An interception warrant must name or describe either—

(a) one person as the interception subject; or

(b) a single set of premises as the premises in relation to which the interception to which the warrant relates is to take place.

(2) The provisions of an interception warrant describing communications the interception of which is authorised or required by the warrant must comprise one or more schedules setting out the addresses, numbers, apparatus or other factors, or combination of factors, that are to be used for identifying the communications that may be or are to be intercepted.

(3) Any factor or combination of factors set out in accordance with subsection (2) must be one that identifies communications which are likely to be or to include—

(a) communications from, or intended for, the person named or described in the warrant in accordance with subsection (1); or

(b) communications originating on, or intended for transmission to, the premises so named or described.

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(4) Subsections (1) and (2) shall not apply to an interception warrant if—

(a) the description of communications to which the warrant relates confines the conduct authorised or required by the warrant to conduct falling within subsection (5); and

(b) at the time of the issue of the warrant, a certificate applicable to the warrant has been issued by the Secretary of State certifying—

(i) the descriptions of intercepted material the examination of which he considers necessary; and

(ii) that he considers the examination of material of those descriptions necessary as mentioned in section 5(3)(a), (b) or (c).

(5) Conduct falls within this subsection if it consists in—

(a) the interception of external communications in the course of their transmission by means of a telecommunication system; and

(b) any conduct authorised in relation to any such interception by section 5(6).

(6) A certificate for the purposes of subsection (4) shall not be issued except under the hand of the Secretary of State.

9 Duration, cancellation and renewal of warrants.

(1) An interception warrant—

(a) shall cease to have effect at the end of the relevant period; but

(b) may be renewed, at any time before the end of that period, by an instrument under the hand of the Secretary of State **[**[F15]or, in the case of a warrant issued by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), a member of the Scottish Executive**]** or, in a case falling within section 7(2)(b), under the hand of a senior official.

(2) An interception warrant shall not be renewed under subsection (1) unless the Secretary of State believes that the warrant continues to be necessary on grounds falling within section 5(3).

(3) The Secretary of State shall cancel an interception warrant if he is satisfied that the warrant is no longer necessary on grounds falling within section 5(3).

(4) The Secretary of State shall cancel an interception warrant if, at any time before the end of the relevant period, he is satisfied in a case in which—

(a) the warrant is one which was issued containing the statement set out in section 7(5)(a) or has been renewed by an instrument containing the statement set out in subsection (5)(b)(i) of this section, and

(b) the latest renewal (if any) of the warrant is not a renewal by an instrument under the hand of the Secretary of State,

that the person named or described in the warrant as the interception subject is in the United Kingdom.

(5) An instrument under the hand of a senior official that renews an interception warrant must contain—

(a) a statement that the renewal is for the purposes of a request for assistance made under an international mutual assistance agreement by the competent authorities of a country or territory outside the United Kingdom; and

(b) whichever of the following statements is applicable—

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(i) a statement that the interception subject appears to be outside the United Kingdom;

(ii) a statement that the interception to which the warrant relates is to take place in relation only to premises outside the United Kingdom.

(6) In this section "the relevant period"—

(a) in relation to an unrenewed warrant issued in a case falling within section 7(2)(a) under the hand of a senior official, means the period ending with the fifth working day following the day of the warrant's issue;

[[F16](ab) in relation to an unrenewed warrant which is endorsed under the hand of the Secretary of State with a statement that the issue of the warrant is believed to be necessary on grounds falling within section 5(3)(a) or (c), means the period of six months beginning with the day of the warrant's issue;**]**

(b) in relation to a renewed warrant the latest renewal of which was by an instrument endorsed under the hand of the Secretary of State with a statement that the renewal is believed to be necessary on grounds falling within section 5(3)(a) or (c), means the period of six months beginning with the day of the warrant's renewal; and

(c) in all other cases, means the period of three months beginning with the day of the warrant's issue or, in the case of a warrant that has been renewed, of its latest renewal.

Textual Amendments

F15 Words in s. 9(1)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 5** (with art. 6)

F16 S. 9(6)(ab) inserted (13.4.2006) by Terrorism Act 2006 (c. 11), **ss. 32(2)**, 39(2); S.I. 2006/1013, **art. 2(2)(b)**

Modifications etc. (not altering text)

C8 S. 9(1)(b)(3) modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 3(1)** (with art. 6)
S. 9(1)(b)(3): functions transferred to the Scottish Ministers (S.) (15.12.2000) by virtue of S.I. 2000/3253,, arts. 1(1)(3), 3, Sch. 2 (with art. 6)

C9 S. 9(1)(b)(3): certain functions modified (9.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), **art. 2**, Sch. 1 para. 2

C10 S. 9(1)(b)(3): transfer of functions (10.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), art. 3, **Sch. 2**

C11 S. 9(1)(b) modified (11.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(2), 2, **Sch. 1 para. 2** (with art. 6)

C12 S. 9(1)(b): functions transferred (12.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(1), 3, **Sch. 2** (with art. 6)

C13 S. 9(3) modified (11.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(2), 2, **Sch. 1 para. 2** (with art. 6)

C14 S. 9(3): functions transferred (12.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(1), 3, **Sch. 2** (with art. 6)

10 Modification of warrants and certificates.

(1) The Secretary of State may at any time—

(a) modify the provisions of an interception warrant; or

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(b) modify a section 8(4) certificate so as to include in the certified material any material the examination of which he considers to be necessary as mentioned in section 5(3)(a), (b) or (c).

(2) If at any time the Secretary of State considers that any factor set out in a schedule to an interception warrant is no longer relevant for identifying communications which, in the case of that warrant, are likely to be or to include communications falling within section 8(3)(a) or (b), it shall be his duty to modify the warrant by the deletion of that factor.

(3) If at any time the Secretary of State considers that the material certified by a section 8(4) certificate includes any material the examination of which is no longer necessary as mentioned in any of paragraphs (a) to (c) of section 5(3), he shall modify the certificate so as to exclude that material from the certified material.

(4) Subject to subsections (5) to (8), a warrant or certificate shall not be modified under this section except by an instrument under the hand of the Secretary of State or of a senior official.

[[F17](4A) Subject to subsections (5A), (6) and (8), a warrant issued by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) shall not be modified under this section except by an instrument under the hand of a member of the Scottish Executive or a member of the staff of the Scottish Administration who is a member of the Senior Civil Service and is designated by the Scottish Ministers as a person under whose hand an instrument may be issued in such a case (in this section referred to as "a designated official")**]**

(5) Unscheduled parts of an interception warrant shall not be modified under the hand of a senior official except in an urgent case in which—

(a) the Secretary of State has himself expressly authorised the modification; and

(b) a statement of that fact is endorsed on the modifying instrument.

[[F18](5A) Unscheduled parts of an interception warrant issued by the Scottish Ministers shall not be modified under the hand of a designated official except in an urgent case in which–

(a) they have themselves (by virtue of provision made under section 63 of the Scotland Act 1998) expressly authorised the modification; and

(b) a statement of that fact is endorsed on the modifying instrument**]**

[[F19](6) Subsection (4) authorises the modification of the scheduled parts of an interception warrant under the hand of a senior official who is either—

(a) the person to whom the warrant is addressed, or

(b) a person holding a position subordinate to that person,

only if the applicable condition specified in subsection (6A) is satisfied and a statement that the condition is satisfied is endorsed on the modifying instrument.

(6A) The applicable condition is—

(a) in the case of an unrenewed warrant, that the warrant is endorsed with a statement that the issue of the warrant is believed to be necessary in the interests of national security; and

(b) in the case of a renewed warrant, that the instrument by which it was last renewed is endorsed with a statement that the renewal is believed to be necessary in the interests of national security.**]**

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(7) A section 8(4) certificate shall not be modified under the hand of a senior official except in an urgent case in which—

(a) the official in question holds a position in respect of which he is expressly authorised by provisions contained in the certificate to modify the certificate on the Secretary of State's behalf; or

(b) the Secretary of State has himself expressly authorised the modification and a statement of that fact is endorsed on the modifying instrument.

(8) Where modifications in accordance with this subsection are expressly authorised by provision contained in the warrant, the scheduled parts of an interception warrant may, in an urgent case, be modified by an instrument under the hand of—

(a) the person to whom the warrant is addressed; or

(b) a person holding any such position subordinate to that person as may be identified in the provisions of the warrant.

(9) Where—

(a) a warrant or certificate is modified by an instrument under the hand of a person other than the Secretary of State **[**[F20]or, as the case may be, the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998)**]**, and

(b) a statement for the purposes of subsection (5)(b) **[**[F21], (5A)(b)**][**[F22], (6)**]** or (7)(b) is endorsed on the instrument, or the modification is made under subsection (8),

that modification shall cease to have effect at the end of the fifth working day following the day of the instrument's issue.

(10) For the purposes of this section—

(a) the scheduled parts of an interception warrant are any provisions of the warrant that are contained in a schedule of identifying factors comprised in the warrant for the purposes of section 8(2); and

(b) the modifications that are modifications of the scheduled parts of an interception warrant include the insertion of an additional such schedule in the warrant;

and references in this section to unscheduled parts of an interception warrant, and to their modification, shall be construed accordingly.

Textual Amendments

F17 S. 10(4A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 6(a)** (with art. 6)

F18 S. 10(5A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 6(b)** (with art. 6)

F19 S. 10(6)(6A) substituted (13.4.2006) for s. 10(6) by Terrorism Act 2006 (c. 11), **ss. 32(3)**, 39(2); S.I. 2006/1013, **art. 2(2)(b)**

F20 Words in s. 10(9)(a) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 6(d)(i)** (with art. 6)

F21 Words in s. 10(9)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 6(d)(ii)** (with art. 6)

F22 Word in s. 10(9)(b) inserted (13.4.2006) by Terrorism Act 2006 (c. 11), **ss. 32(4)**, 39(2); S.I. 2006/1013, **art. 2(2)(b)**

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Modifications etc. (not altering text)

C15 S. 10(1)(a)(2) modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 2** (with art. 6)
S. 10(1)(a)(2): functions transferred to the Scottish Ministers (S.) (15.12.2000) by virtue of S.I. 2000/3253, arts. 1(1)(3), 3, **Sch. 2** (with art. 6)

C16 S. 10(1)(a)(2): certain functions modified (9.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), **art. 2**, Sch. 1 para. 2

C17 S. 10(1)(a): transfer of functions (10.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), art. 3, **Sch. 2**

C18 S. 10(1)(a) modified (11.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(2), 2, **Sch. 1 para. 2** (with art. 6)

C19 S. 10(1)(a): functions transferred (12.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(1), 3, **Sch. 2** (with art. 6)

C20 S. 10(2): transfer of functions (10.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), art. 3, **Sch. 2**

C21 S. 10(2) modified (11.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(2), 2, **Sch. 1 para. 2** (with art. 6)

C22 S. 10(2): functions transferred (12.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(1), 3, **Sch. 2** (with art. 6)

11 Implementation of warrants.

(1) Effect may be given to an interception warrant either—
- (a) by the person to whom it is addressed; or
- (b) by that person acting through, or together with, such other persons as he may require (whether under subsection (2) or otherwise) to provide him with assistance with giving effect to the warrant.

(2) For the purpose of requiring any person to provide assistance in relation to an interception warrant the person to whom it is addressed may—
- (a) serve a copy of the warrant on such persons as he considers may be able to provide such assistance; or
- (b) make arrangements under which a copy of it is to be or may be so served.

(3) The copy of an interception warrant that is served on any person under subsection (2) may, to the extent authorised—
- (a) by the person to whom the warrant is addressed, or
- (b) by the arrangements made by him for the purposes of that subsection,

omit any one or more of the schedules to the warrant.

(4) Where a copy of an interception warrant has been served by or on behalf of the person to whom it is addressed on—
- (a) a person who provides a postal service,
- (b) a person who provides a public telecommunications service, or
- (c) a person not falling within paragraph (b) who has control of the whole or any part of a telecommunication system located wholly or partly in the United Kingdom,

it shall (subject to subsection (5)) be the duty of that person to take all such steps for giving effect to the warrant as are notified to him by or on behalf of the person to whom the warrant is addressed.

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(5) A person who is under a duty by virtue of subsection (4) to take steps for giving effect to a warrant shall not be required to take any steps which it is not reasonably practicable for him to take.

(6) For the purposes of subsection (5) the steps which it is reasonably practicable for a person to take in a case in which obligations have been imposed on him by or under section 12 shall include every step which it would have been reasonably practicable for him to take had he complied with all the obligations so imposed on him.

(7) A person who knowingly fails to comply with his duty under subsection (4) shall be guilty of an offence and liable—
   (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
   (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(8) A person's duty under subsection (4) to take steps for giving effect to a warrant shall be enforceable by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the [M14]Court of Session Act 1988, or for any other appropriate relief.

(9) For the purposes of this Act the provision of assistance with giving effect to an interception warrant includes any disclosure to the person to whom the warrant is addressed, or to persons acting on his behalf, of intercepted material obtained by any interception authorised or required by the warrant, and of any related communications data.

Marginal Citations
M14 1988 c. 36.

Interception capability and costs

12 Maintenance of interception capability.

(1) The Secretary of State may by order provide for the imposition by him on persons who—
   (a) are providing public postal services or public telecommunications services, or
   (b) are proposing to do so,

   of such obligations as it appears to him reasonable to impose for the purpose of securing that it is and remains practicable for requirements to provide assistance in relation to interception warrants to be imposed and complied with.

(2) The Secretary of State's power to impose the obligations provided for by an order under this section shall be exercisable by the giving, in accordance with the order, of a notice requiring the person who is to be subject to the obligations to take all such steps as may be specified or described in the notice.

(3) Subject to subsection (11), the only steps that may be specified or described in a notice given to a person under subsection (2) are steps appearing to the Secretary of State to be necessary for securing that that person has the practical capability of providing

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any assistance which he may be required to provide in relation to relevant interception warrants.

(4) A person shall not be liable to have an obligation imposed on him in accordance with an order under this section by reason only that he provides, or is proposing to provide, to members of the public a telecommunications service the provision of which is or, as the case may be, will be no more than—
   (a) the means by which he provides a service which is not a telecommunications service; or
   (b) necessarily incidental to the provision by him of a service which is not a telecommunications service.

(5) Where a notice is given to any person under subsection (2) and otherwise than by virtue of subsection (6)(c), that person may, before the end of such period as may be specified in an order under this section, refer the notice to the Technical Advisory Board.

(6) Where a notice given to any person under subsection (2) is referred to the Technical Advisory Board under subsection (5)—
   (a) there shall be no requirement for that person to comply, except in pursuance of a notice under paragraph (c)(ii), with any obligations imposed by the notice;
   (b) the Board shall consider the technical requirements and the financial consequences, for the person making the reference, of the notice referred to them and shall report their conclusions on those matters to that person and to the Secretary of State; and
   (c) the Secretary of State, after considering any report of the Board relating to the notice, may either—
      (i) withdraw the notice; or
      (ii) give a further notice under subsection (2) confirming its effect, with or without modifications.

(7) It shall be the duty of a person to whom a notice is given under subsection (2) to comply with the notice; and that duty shall be enforceable by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the [M15]Court of Session Act 1988, or for any other appropriate relief.

(8) A notice for the purposes of subsection (2) must specify such period as appears to the Secretary of State to be reasonable as the period within which the steps specified or described in the notice are to be taken.

(9) Before making an order under this section the Secretary of State shall consult with—
   (a) such persons appearing to him to be likely to be subject to the obligations for which it provides,
   (b) the Technical Advisory Board,
   (c) such persons representing persons falling within paragraph (a), and
   (d) such persons with statutory functions in relation to persons falling within that paragraph,

   as he considers appropriate.

(10) The Secretary of State shall not make an order under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

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(11) For the purposes of this section the question whether a person has the practical capability of providing assistance in relation to relevant interception warrants shall include the question whether all such arrangements have been made as the Secretary of State considers necessary—

(a) with respect to the disclosure of intercepted material;

(b) for the purpose of ensuring that security and confidentiality are maintained in relation to, and to matters connected with, the provision of any such assistance; and

(c) for the purpose of facilitating the carrying out of any functions in relation to this Chapter of the Interception of Communications Commissioner;

but before determining for the purposes of the making of any order, or the imposition of any obligation, under this section what arrangements he considers necessary for the purpose mentioned in paragraph (c) the Secretary of State shall consult that Commissioner.

(12) In this section "relevant interception warrant"—

(a) in relation to a person providing a public postal service, means an interception warrant relating to the interception of communications in the course of their transmission by means of that service; and

(b) in relation to a person providing a public telecommunications service, means an interception warrant relating to the interception of communications in the course of their transmission by means of a telecommunication system used for the purposes of that service.

Marginal Citations

M15 1988 c. 36.

13 Technical Advisory Board.

(1) There shall be a Technical Advisory Board consisting of such number of persons appointed by the Secretary of State as he may by order provide.

(2) The order providing for the membership of the Technical Advisory Board must also make provision which is calculated to ensure—

(a) that the membership of the Technical Advisory Board includes persons likely effectively to represent the interests of the persons on whom obligations may be imposed under section 12;

(b) that the membership of the Board includes persons likely effectively to represent the interests of the persons by or on whose behalf applications for interception warrants may be made;

(c) that such other persons (if any) as the Secretary of State thinks fit may be appointed to be members of the Board; and

(d) that the Board is so constituted as to produce a balance between the representation of the interests mentioned in paragraph (a) and the representation of those mentioned in paragraph (b).

(3) The Secretary of State shall not make an order under this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

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14 Grants for interception costs.

(1) It shall be the duty of the Secretary of State to ensure that such arrangements are in force as are necessary for securing that a person who provides—
  (a) a postal service, or
  (b) a telecommunications service,

receives such contribution as is, in the circumstances of that person's case, a fair contribution towards the costs incurred, or likely to be incurred, by that person in consequence of the matters mentioned in subsection (2).

(2) Those matters are—
  (a) in relation to a person providing a postal service, the issue of interception warrants relating to communications transmitted by means of that postal service;
  (b) in relation to a person providing a telecommunications service, the issue of interception warrants relating to communications transmitted by means of a telecommunication system used for the purposes of that service;
  (c) in relation to each description of person, the imposition on that person of obligations provided for by an order under section 12.

(3) For the purpose of complying with his duty under this section, the Secretary of State may make arrangements for payments to be made out of money provided by Parliament.

Restrictions on use of intercepted material etc.

15 General safeguards.

(1) Subject to subsection (6), it shall be the duty of the Secretary of State to ensure, in relation to all interception warrants, that such arrangements are in force as he considers necessary for securing—
  (a) that the requirements of subsections (2) and (3) are satisfied in relation to the intercepted material and any related communications data; and
  (b) in the case of warrants in relation to which there are section 8(4) certificates, that the requirements of section 16 are also satisfied.

(2) The requirements of this subsection are satisfied in relation to the intercepted material and any related communications data if each of the following—
  (a) the number of persons to whom any of the material or data is disclosed or otherwise made available,
  (b) the extent to which any of the material or data is disclosed or otherwise made available,
  (c) the extent to which any of the material or data is copied, and
  (d) the number of copies that are made,

is limited to the minimum that is necessary for the authorised purposes.

(3) The requirements of this subsection are satisfied in relation to the intercepted material and any related communications data if each copy made of any of the material or data (if not destroyed earlier) is destroyed as soon as there are no longer any grounds for retaining it as necessary for any of the authorised purposes.

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(4) For the purposes of this section something is necessary for the authorised purposes if, and only if—

(a) it continues to be, or is likely to become, necessary as mentioned in section 5(3);

(b) it is necessary for facilitating the carrying out of any of the functions under this Chapter of the Secretary of State;

(c) it is necessary for facilitating the carrying out of any functions in relation to this Part of the Interception of Communications Commissioner or of the Tribunal;

(d) it is necessary to ensure that a person conducting a criminal prosecution has the information he needs to determine what is required of him by his duty to secure the fairness of the prosecution; or

(e) it is necessary for the performance of any duty imposed on any person by the [M16]Public Records Act 1958 or the [M17]Public Records Act (Northern Ireland) 1923.

(5) The arrangements for the time being in force under this section for securing that the requirements of subsection (2) are satisfied in relation to the intercepted material or any related communications data must include such arrangements as the Secretary of State considers necessary for securing that every copy of the material or data that is made is stored, for so long as it is retained, in a secure manner.

(6) Arrangements in relation to interception warrants which are made for the purposes of subsection (1)—

(a) shall not be required to secure that the requirements of subsections (2) and (3) are satisfied in so far as they relate to any of the intercepted material or related communications data, or any copy of any such material or data, possession of which has been surrendered to any authorities of a country or territory outside the United Kingdom; but

(b) shall be required to secure, in the case of every such warrant, that possession of the intercepted material and data and of copies of the material or data is surrendered to authorities of a country or territory outside the United Kingdom only if the requirements of subsection (7) are satisfied.

(7) The requirements of this subsection are satisfied in the case of a warrant if it appears to the Secretary of State—

(a) that requirements corresponding to those of subsections (2) and (3) will apply, to such extent (if any) as the Secretary of State thinks fit, in relation to any of the intercepted material or related communications data possession of which, or of any copy of which, is surrendered to the authorities in question; and

(b) that restrictions are in force which would prevent, to such extent (if any) as the Secretary of State thinks fit, the doing of anything in, for the purposes of or in connection with any proceedings outside the United Kingdom which would result in such a disclosure as, by virtue of section 17, could not be made in the United Kingdom.

(8) In this section "copy", in relation to intercepted material or related communications data, means any of the following (whether or not in documentary form)—

(a) any copy, extract or summary of the material or data which identifies itself as the product of an interception, and

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(b) any record referring to an interception which is a record of the identities of the persons to or by whom the intercepted material was sent, or to whom the communications data relates,

and "copied" shall be construed accordingly.

Modifications etc. (not altering text)

C23 S. 15(1): functions transferred to the Scottish Ministers (S.) (15.12.2000) by virtue of S.I. 2000/3253 arts. 1(1)(3), 3, Sch. 2 (with art. 6)
S. 15(1) modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 2** (with art. 6)

C24 S. 15(1): certain functions modified (9.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), **art. 2**, Sch. 1 para. 2

C25 S. 15(1): transfer of functions (10.10.2003) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2003 (S.I. 2003/2617), art. 3, **Sch. 2**

C26 S. 15(1) modified (11.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(2), 2, **Sch. 1 para. 2** (with art. 6)

C27 S. 15(1): functions transferred (12.10.2007) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2007 (S.I. 2007/2915), arts. 1(1), 3, **Sch. 2** (with art. 6)

Marginal Citations

M16 1958 c. 51.

M17 1923 c. 20 (N.I.).

16 Extra safeguards in the case of certificated warrants.

(1) For the purposes of section 15 the requirements of this section, in the case of a warrant in relation to which there is a section 8(4) certificate, are that the intercepted material is read, looked at or listened to by the persons to whom it becomes available by virtue of the warrant to the extent only that it—

(a) has been certified as material the examination of which is necessary as mentioned in section 5(3)(a), (b) or (c); and

(b) falls within subsection (2).

(2) Subject to subsections (3) and (4), intercepted material falls within this subsection so far only as it is selected to be read, looked at or listened to otherwise than according to a factor which—

(a) is referable to an individual who is known to be for the time being in the British Islands; and

(b) has as its purpose, or one of its purposes, the identification of material contained in communications sent by him, or intended for him.

(3) Intercepted material falls within subsection (2), notwithstanding that it is selected by reference to any such factor as is mentioned in paragraph (a) and (b) of that subsection, if—

(a) it is certified by the Secretary of State for the purposes of section 8(4) that the examination of material selected according to factors referable to the individual in question is necessary as mentioned in subsection 5(3)(a), (b) or (c); and

(b) the material relates only to communications sent during **[**[F23]a period specified in the certificate that is no longer than the permitted maximum**]** .

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[[F24](3A) In subsection (3)(b) 'the permitted maximum' means—

(a) in the case of material the examination of which is certified for the purposes of section 8(4) as necessary in the interests of national security, six months; and

(b) in any other case, three months.**]**

(4) Intercepted material also falls within subsection (2), notwithstanding that it is selected by reference to any such factor as is mentioned in paragraph (a) and (b) of that subsection, if—

(a) the person to whom the warrant is addressed believes, on reasonable grounds, that the circumstances are such that the material would fall within that subsection; or

(b) the conditions set out in subsection (5) below are satisfied in relation to the selection of the material.

(5) Those conditions are satisfied in relation to the selection of intercepted material if—

(a) it has appeared to the person to whom the warrant is addressed that there has been such a relevant change of circumstances as, but for subsection (4)(b), would prevent the intercepted material from falling within subsection (2);

(b) since it first so appeared, a written authorisation to read, look at or listen to the material has been given by a senior official; and

(c) the selection is made before the end of **[**[F25]the permitted period**]** .

[[F26](5A) In subsection (5)(c) 'the permitted period' means—

(a) in the case of material the examination of which is certified for the purposes of section 8(4) as necessary in the interests of national security, the period ending with the end of the fifth working day after it first appeared as mentioned in subsection (5)(a) to the person to whom the warrant is addressed; and

(b) in any other case, the period ending with the end of the first working day after it first so appeared to that person.**]**

(6) References in this section to its appearing that there has been a relevant change of circumstances are references to its appearing either—

(a) that the individual in question has entered the British Islands; or

(b) that a belief by the person to whom the warrant is addressed in the individual's presence outside the British Islands was in fact mistaken.

Textual Amendments

F23 Words in s. 16(3)(b) substituted (13.4.2006) by Terrorism Act 2006 (c. 11), **ss. 32(5)(a)**, 39(2); S.I. 2006/1013, **art. 2(2)(b)**

F24 S. 16(3A) inserted (13.4.2006) by Terrorism Act 2006 (c. 11), **ss. 32(6)**, 39(2); S.I. 2006/1013, **art. 2(2)(b)**

F25 Words in s. 16(5)(c) substituted (13.4.2006) by Terrorism Act 2006 (c. 11), **ss. 32(5)(b)**, 39(2); S.I. 2006/1013, **art. 2(2)(b)**

F26 S. 16(5A) inserted (13.4.2006) by Terrorism Act 2006 (c. 11), **ss. 32(7)**, 39(2); S.I. 2006/1013, **art. 2(2)(b)**

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17 Exclusion of matters from legal proceedings.

(1) Subject to section 18, no evidence shall be adduced, question asked, assertion or disclosure made or other thing done in, for the purposes of or in connection with any legal proceedings **[**[F27] or Inquiries Act proceedings**]** which (in any manner)—

(a) discloses, in circumstances from which its origin in anything falling within subsection (2) may be inferred, any of the contents of an intercepted communication or any related communications data; or

(b) tends (apart from any such disclosure) to suggest that anything falling within subsection (2) has or may have occurred or be going to occur.

(2) The following fall within this subsection—

(a) conduct by a person falling within subsection (3) that was or would be an offence under section 1(1) or (2) of this Act or under section 1 of the [M18]Interception of Communications Act 1985;

(b) a breach by the Secretary of State of his duty under section 1(4) of this Act;

(c) the issue of an interception warrant or of a warrant under the [M19]Interception of Communications Act 1985;

(d) the making of an application by any person for an interception warrant, or for a warrant under that Act;

(e) the imposition of any requirement on any person to provide assistance with giving effect to an interception warrant.

(3) The persons referred to in subsection (2)(a) are—

(a) any person to whom a warrant under this Chapter may be addressed;

(b) any person holding office under the Crown;

[[F28](c) any member of the staff of the Serious Organised Crime Agency;**]**

[[F29](ca) any member of the Scottish Crime and Drug Enforcement Agency;**]**

(e) any person employed by or for the purposes of a police force;

(f) any person providing a postal service or employed for the purposes of any business of providing such a service; and

(g) any person providing a public telecommunications service or employed for the purposes of any business of providing such a service.

(4) **[**[F30] In this section—

"Inquiries Act proceedings" means proceedings of an inquiry under the Inquiries Act 2005;

"intercepted communications" means**]** any communication intercepted in the course of its transmission by means of a postal service or telecommunication system.

Textual Amendments

F27 Words in s. 17(1) inserted (7.6.2005) by Inquiries Act 2005 (c. 12), ss. 48, 51, **Sch. 2 para. 20(2)** (with ss. 44, 50); S.I. 2005/1432, **art. 2**

F28 S. 17(3)(c) substituted (1.4.2006) for s. 17(3)(c)(d) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 133(1)** (with Sch. 4 para. 133(2)); S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F29 S. 17(3)(ca) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(3)**

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F30 Words in s. 17(4) substituted (7.6.2005) by Inquiries Act 2005 (c. 12), ss. 48, 51, **Sch. 2 para. 20(3)** (with ss. 44, 50); S.I. 2005/1432, **art. 2**

Marginal Citations

M18 1985 c. 56.

M19 1985 c. 56.

18 Exceptions to section 17.

(1) Section 17(1) shall not apply in relation to—

(a) any proceedings for a relevant offence;

(b) any civil proceedings under section 11(8);

(c) any proceedings before the Tribunal;

(d) any proceedings on an appeal or review for which provision is made by an order under section 67(8);

[[F31](da) any control order proceedings (within the meaning of the Prevention of Terrorism Act 2005) or any proceedings arising out of such proceedings;**]**

[[F32](db) any financial restrictions proceedings as defined in section 65 of the Counter-Terrorism Act 2008, or any proceedings arising out of such proceedings;**]**

(e) any proceedings before the Special Immigration Appeals Commission or any proceedings arising out of proceedings before that Commission; or

(f) any proceedings before the Proscribed Organisations Appeal Commission or any proceedings arising out of proceedings before that Commission.

(2) Subsection (1) shall not, by virtue of **[**[F33]paragraphs (da) to (f)**]** , authorise the disclosure of anything—

[[F34](za) in the case of any proceedings falling within paragraph (da) to—

(i) a person who, within the meaning of the Schedule to the Prevention of Terrorism Act 2005, is or was a relevant party to the control order proceedings; or

(ii) any person who for the purposes of any proceedings so falling (but otherwise than by virtue of an appointment under paragraph 7 of that Schedule) represents a person falling within sub-paragraph (i);**]**

[[F35](zb) in the case of proceedings falling within paragraph (db), to—

(i) a person, other than the Treasury, who is or was a party to the proceedings, or

(ii) any person who for the purposes of the proceedings (but otherwise than by virtue of appointment as a special advocate) represents a person falling within sub-paragraph (i);**]**

(a) in the case of any proceedings falling within paragraph (e), to—

(i) the appellant to the Special Immigration Appeals Commission; or

(ii) any person who for the purposes of any proceedings so falling (but otherwise than by virtue of an appointment under section 6 of the [M20]Special Immigration Appeals Commission Act 1997) represents that appellant;

or

(b) in the case of proceedings falling within paragraph (f), to—

(i) the applicant to the Proscribed Organisations Appeal Commission;

(ii) the organisation concerned (if different);

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(iii) any person designated under paragraph 6 of Schedule 3 to the Terrorism Act 2000 to conduct proceedings so falling on behalf of that organisation; or

(iv) any person who for the purposes of any proceedings so falling (but otherwise than by virtue of an appointment under paragraph 7 of that Schedule) represents that applicant or that organisation.

(3) Section 17(1) shall not prohibit anything done in, for the purposes of, or in connection with, so much of any legal proceedings as relates to the fairness or unfairness of a dismissal on the grounds of any conduct constituting an offence under section 1(1) or (2), 11(7) or 19 of this Act, or section 1 of the [M21]Interception of Communications Act 1985.

(4) Section 17(1)(a) shall not prohibit the disclosure of any of the contents of a communication if the interception of that communication was lawful by virtue of section 1(5)(c), 3 or 4.

(5) Where any disclosure is proposed to be or has been made on the grounds that it is authorised by subsection (4), section 17(1) shall not prohibit the doing of anything in, or for the purposes of, so much of any [F36]. . . proceedings as relates to the question whether that disclosure is or was so authorised.

(6) Section 17(1)(b) shall not prohibit the doing of anything that discloses any conduct of a person for which he has been convicted of an offence under section 1(1) or (2), 11(7) or 19 of this Act, or section 1 of the [M22]Interception of Communications Act 1985.

(7) Nothing in section 17(1) shall prohibit any such disclosure of any information that continues to be available for disclosure as is confined to—

(a) a disclosure to a person conducting a criminal prosecution for the purpose only of enabling that person to determine what is required of him by his duty to secure the fairness of the prosecution; [F37]. . .

(b) a disclosure to a relevant judge in a case in which that judge has ordered the disclosure to be made to him alone**[**[F38]; or

[[F39](c) a disclosure to the panel of an inquiry held under the Inquiries Act 2005 or to a person appointed as counsel to such an inquiry where, in the course of the inquiry, the panel has ordered the disclosure to be made to the panel alone or (as the case may be) to the panel and the person appointed as counsel to the inquiry; or**]]**

(8) A relevant judge shall not order a disclosure under subsection (7)(b) except where he is satisfied that the exceptional circumstances of the case make the disclosure essential in the interests of justice.

[[F40](8A) The panel of an inquiry shall not order a disclosure under subsection (7)(c) except where it is satisfied that the exceptional circumstances of the case make the disclosure essential to enable the inquiry to fulfil its terms of reference.**]**

(9) Subject to subsection (10), where in any criminal proceedings—

(a) a relevant judge does order a disclosure under subsection (7)(b), and

(b) in consequence of that disclosure he is of the opinion that there are exceptional circumstances requiring him to do so,

he may direct the person conducting the prosecution to make for the purposes of the proceedings any such admission of fact as that judge thinks essential in the interests of justice.

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(10) Nothing in any direction under subsection (9) shall authorise or require anything to be done in contravention of section 17(1).

(11) In this section "a relevant judge" means—

(a) any judge of the High Court or of the Crown Court or any Circuit judge;

(b) any judge of the High Court of Justiciary or any sheriff;

[[F41](c) in relation to proceedings before the Court Martial, the judge advocate for those proceedings; or**]**

(d) any person holding any such judicial office as entitles him to exercise the jurisdiction of a judge falling within paragraph (a) or (b).

(12) In this section "relevant offence" means—

(a) an offence under any provision of this Act;

(b) an offence under section 1 of the [M23]Interception of Communications Act 1985;

(c) an offence under **[**[F42]section 47 or 48 of the Wireless Telegraphy Act 2006**]** ;

(d) an offence under [F43]. . . **[**[F44]section 83 or 84 of the Postal Services Act 2000**]**;

(e) **[**[F45]an offence under section 45 of the [M24]Telecommunications Act 1984;**]**

(f) an offence under section 4 of the [M25]Official Secrets Act 1989 relating to any such information, document or article as is mentioned in subsection (3)(a) of that section;

(g) an offence under section 1 or 2 of the [M26]Official Secrets Act 1911 relating to any sketch, plan, model, article, note, document or information which incorporates or relates to the contents of any intercepted communication or any related communications data or tends to suggest as mentioned in section 17(1)(b) of this Act;

(h) perjury committed in the course of any proceedings mentioned in subsection (1) or (3) of this section;

(i) attempting or conspiring to commit, or aiding, abetting, counselling or procuring the commission of, an offence falling within any of the preceding paragraphs; and

(j) contempt of court committed in the course of, or in relation to, any proceedings mentioned in subsection (1) or (3) of this section.

(13) In subsection (12) "intercepted communication" has the same meaning as in section 17.

Textual Amendments

F31 S. 18(1)(da) inserted (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), s. 11, **Sch. para. 9(2)**

F32 S. 18(1)(db) inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), **ss. 69(2)**, 100(2) (with s. 101(2))

F33 Words in s. 18(2) substituted (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), s. 11, **Sch. para. 9(3)**

F34 S. 18(2)(za) inserted (11.3.2005) by Prevention of Terrorism Act 2005 (c. 2), s. 11, **Sch. para. 9(4)**

F35 S. 18(2)(zb) inserted (27.11.2008) by Counter-Terrorism Act 2008 (c. 28), **ss. 69(3)**, 100(2) (with s. 101(2))

F36 Word in s. 18(5) repealed (7.6.2005) by Inquiries Act 2005 (c. 12), ss. 48, 49, 51, Sch. 2 para. 21(2), **Sch. 3** (with ss. 44, 50); S.I. 2005/1432, **art. 2**

F37 Word in s. 18(7) repealed (7.6.2005) by Inquiries Act 2005 (c. 12), ss. 49, 51, **Sch. 3** (with ss. 44, 50); S.I. 2005/1432, **art. 2**

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F38 S. 18(7)(c) and word inserted (7.6.2005) by Inquiries Act 2005 (c. 12), ss. 48, 51, **Sch. 2 para. 21(3)** (with ss. 44, 50); S.I. 2005/1432, **art. 2**

F39 S. 18(7)(c) substituted (16.2.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 91, 100, **s. 74(1)(2)** (with s. 101(2)); S.I. 2009/58, **art. 2(b)**

F40 S. 18(8A) inserted (7.6.2005) by Inquiries Act 2005 (c. 12), ss. 48, 51, **Sch. 2 para. 21(4)** (with ss. 44, 50); S.I. 2005/1432, **art. 2**

F41 S. 18(11)(c) substituted (28.3.2009 for specified purposes and otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 169**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

F42 Words in s. 18(12)(c) substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 123, 126, **Sch. 7 para. 23**

F43 Words in s. 18(12)(d) repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(11))

F44 Words in s. 18(12)(d) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 135(2)** (with art. 4(8))

F45 S. 18(12)(e) repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 19(1)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1; S.I. 2003/3142, **art. 3(2)** (with art. 11)

Marginal Citations

M20 1997 c. 68.
M21 1985 c. 56.
M22 1985 c. 56.
M23 1985 c. 56.
M24 1984 c. 12.
M25 1989 c. 6.
M26 1911 c. 28.

19 Offence for unauthorised disclosures.

(1) Where an interception warrant has been issued or renewed, it shall be the duty of every person falling within subsection (2) to keep secret all the matters mentioned in subsection (3).

(2) The persons falling within this subsection are—

(a) the persons specified in section 6(2);

(b) every person holding office under the Crown;

[F46(c) every member of the staff of the Serious Organised Crime Agency;]

[F47(ca) every member of the Scottish Crime and Drug Enforcement Agency;]

(e) every person employed by or for the purposes of a police force;

(f) persons providing postal services or employed for the purposes of any business of providing such a service;

(g) persons providing public telecommunications services or employed for the purposes of any business of providing such a service;

(h) persons having control of the whole or any part of a telecommunication system located wholly or partly in the United Kingdom.

(3) Those matters are—

(a) the existence and contents of the warrant and of any section 8(4) certificate in relation to the warrant;

(b) the details of the issue of the warrant and of any renewal or modification of the warrant or of any such certificate;

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(c) the existence and contents of any requirement to provide assistance with giving effect to the warrant;

(d) the steps taken in pursuance of the warrant or of any such requirement; and

(e) everything in the intercepted material, together with any related communications data.

(4) A person who makes a disclosure to another of anything that he is required to keep secret under this section shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(5) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that he could not reasonably have been expected, after first becoming aware of the matter disclosed, to take steps to prevent the disclosure.

(6) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that—

(a) the disclosure was made by or to a professional legal adviser in connection with the giving, by the adviser to any client of his, of advice about the effect of provisions of this Chapter; and

(b) the person to whom or, as the case may be, by whom it was made was the client or a representative of the client.

(7) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was made by a legal adviser—

(a) in contemplation of, or in connection with, any legal proceedings; and

(b) for the purposes of those proceedings.

(8) Neither subsection (6) nor subsection (7) applies in the case of a disclosure made with a view to furthering any criminal purpose.

(9) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure made to the Interception of Communications Commissioner or authorised—

(a) by that Commissioner;

(b) by the warrant or the person to whom the warrant is or was addressed;

(c) by the terms of the requirement to provide assistance; or

(d) by section 11(9).

Textual Amendments

F46 S. 19(2)(c) substituted (1.4.2006) for s. 19(2)(c)(d) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 134(1)** (with Sch. 4 para. 134(2)); S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (with art. 4(2)-(7))

F47 S. 19(2)(ca) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(4)**

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Interpretation of Chapter I

20 Interpretation of Chapter I.

In this Chapter—

"certified", in relation to a section 8(4) certificate, means of a description certified by the certificate as a description of material the examination of which the Secretary of State considers necessary;

"external communication" means a communication sent or received outside the British Islands;

"intercepted material", in relation to an interception warrant, means the contents of any communications intercepted by an interception to which the warrant relates;

"the interception subject", in relation to an interception warrant, means the person about whose communications information is sought by the interception to which the warrant relates;

"international mutual assistance agreement" means an international agreement designated for the purposes of section 1(4);

"related communications data", in relation to a communication intercepted in the course of its transmission by means of a postal service or telecommunication system, means so much of any communications data (within the meaning of Chapter II of this Part) as—

(a) is obtained by, or in connection with, the interception; and

(b) relates to the communication or to the sender or recipient, or intended recipient, of the communication;

"section 8(4) certificate" means any certificate issued for the purposes of section 8(4).

CHAPTER II

ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

21 Lawful acquisition and disclosure of communications data.

(1) This Chapter applies to—

(a) any conduct in relation to a postal service or telecommunication system for obtaining communications data, other than conduct consisting in the interception of communications in the course of their transmission by means of such a service or system; and

(b) the disclosure to any person of communications data.

(2) Conduct to which this Chapter applies shall be lawful for all purposes if—

(a) it is conduct in which any person is authorised or required to engage by an authorisation or notice granted or given under this Chapter; and

(b) the conduct is in accordance with, or in pursuance of, the authorisation or requirement.

(3) A person shall not be subject to any civil liability in respect of any conduct of his which—

(a) is incidental to any conduct that is lawful by virtue of subsection (2); and

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(b) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question.

(4) In this Chapter "communications data" means any of the following—

(a) any traffic data comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of any postal service or telecommunication system by means of which it is being or may be transmitted;

(b) any information which includes none of the contents of a communication (apart from any information falling within paragraph (a)) and is about the use made by any person—

(i) of any postal service or telecommunications service; or

(ii) in connection with the provision to or use by any person of any telecommunications service, of any part of a telecommunication system;

(c) any information not falling within paragraph (a) or (b) that is held or obtained, in relation to persons to whom he provides the service, by a person providing a postal service or telecommunications service.

(5) In this section "relevant enactment" means—

(a) an enactment contained in this Act;

(b) section 5 of the [M27]Intelligence Services Act 1994 (warrants for the intelligence services); or

(c) an enactment contained in Part III of the [M28]Police Act 1997 (powers of the police and of **[**[F48]officers of Revenue and Customs).**]**

(6) In this section "traffic data", in relation to any communication, means—

(a) any data identifying, or purporting to identify, any person, apparatus or location to or from which the communication is or may be transmitted,

(b) any data identifying or selecting, or purporting to identify or select, apparatus through which, or by means of which, the communication is or may be transmitted,

(c) any data comprising signals for the actuation of apparatus used for the purposes of a telecommunication system for effecting (in whole or in part) the transmission of any communication, and

(d) any data identifying the data or other data as data comprised in or attached to a particular communication,

but that expression includes data identifying a computer file or computer program access to which is obtained, or which is run, by means of the communication to the extent only that the file or program is identified by reference to the apparatus in which it is stored.

(7) In this section—

(a) references, in relation to traffic data comprising signals for the actuation of apparatus, to a telecommunication system by means of which a communication is being or may be transmitted include references to any telecommunication system in which that apparatus is comprised; and

(b) references to traffic data being attached to a communication include references to the data and the communication being logically associated with each other;

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and in this section "data", in relation to a postal item, means anything written on the outside of the item.

Textual Amendments

F48 Words in s. 21(5)(c) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 7**; S.I. 2008/219, **art. 2(b)**

Commencement Information

I2 S. 21 wholly in force; s. 21 not in force at Royal Assent see s. 83(2); S. 21(4) in force for certain purposes at 2.10.2000 by S.I. 2000/2543, **art. 3**; s. 21 wholly in force at 5.1.2004 by S.I. 2003./3140, {art. 2(a)}

Marginal Citations

M27 1994 c. 13.
M28 1997 c. 50.

22 Obtaining and disclosing communications data.

(1) This section applies where a person designated for the purposes of this Chapter believes that it is necessary on grounds falling within subsection (2) to obtain any communications data.

(2) It is necessary on grounds falling within this subsection to obtain communications data if it is necessary—
- (a) in the interests of national security;
- (b) for the purpose of preventing or detecting crime 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;
- (g) for the purpose, in an emergency, of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health; or
- (h) for any purpose (not falling within paragraphs (a) to (g)) which is specified for the purposes of this subsection by an order made by the Secretary of State.

(3) Subject to subsection (5), the designated person may grant an authorisation for persons holding offices, ranks or positions with the same relevant public authority as the designated person to engage in any conduct to which this Chapter applies.

(4) Subject to subsection (5), where it appears to the designated person that a postal or telecommunications operator is or may be in possession of, or be capable of obtaining, any communications data, the designated person may, by notice to the postal or telecommunications operator, require the operator—
- (a) if the operator is not already in possession of the data, to obtain the data; and
- (b) in any case, to disclose all of the data in his possession or subsequently obtained by him.

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(5) The designated person shall not grant an authorisation under subsection (3), or give a notice under subsection (4), unless he believes that obtaining the data in question by the conduct authorised or required by the authorisation or notice is proportionate to what is sought to be achieved by so obtaining the data.

(6) It shall be the duty of the postal or telecommunications operator to comply with the requirements of any notice given to him under subsection (4).

(7) A person who is under a duty by virtue of subsection (6) shall not be required to do anything in pursuance of that duty which it is not reasonably practicable for him to do.

(8) The duty imposed by subsection (6) shall be enforceable by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the [M29]Court of Session Act 1988, or for any other appropriate relief.

(9) The Secretary of State shall not make an order under subsection (2)(h) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Marginal Citations

M29 1988 c. 36.

23 Form and duration of authorisations and notices.

(1) An authorisation under section 22(3)—

(a) must be granted in writing or (if not in writing) in a manner that produces a record of its having been granted;

(b) must describe the conduct to which this Chapter applies that is authorised and the communications data in relation to which it is authorised;

(c) must specify the matters falling within section 22(2) by reference to which it is granted; and

(d) must specify the office, rank or position held by the person granting the authorisation.

(2) A notice under section 22(4) requiring communications data to be disclosed or to be obtained and disclosed—

(a) must be given in writing or (if not in writing) must be given in a manner that produces a record of its having been given;

(b) must describe the communications data to be obtained or disclosed under the notice;

(c) must specify the matters falling within section 22(2) by reference to which the notice is given;

(d) must specify the office, rank or position held by the person giving it; and

(e) must specify the manner in which any disclosure required by the notice is to be made.

(3) A notice under section 22(4) shall not require the disclosure of data to any person other than—

(a) the person giving the notice; or

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(b) such other person as may be specified in or otherwise identified by, or in accordance with, the provisions of the notice;

but the provisions of the notice shall not specify or otherwise identify a person for the purposes of paragraph (b) unless he holds an office, rank or position with the same relevant public authority as the person giving the notice.

(4) An authorisation under section 22(3) or notice under section 22(4)—

(a) shall not authorise or require any data to be obtained after the end of the period of one month beginning with the date on which the authorisation is granted or the notice given; and

(b) in the case of a notice, shall not authorise or require any disclosure after the end of that period of any data not in the possession of, or obtained by, the postal or telecommunications operator at a time during that period.

(5) An authorisation under section 22(3) or notice under section 22(4) may be renewed at any time before the end of the period of one month applying (in accordance with subsection (4) or subsection (7)) to that authorisation or notice.

(6) A renewal of an authorisation under section 22(3) or of a notice under section 22(4) shall be by the grant or giving, in accordance with this section, of a further authorisation or notice.

(7) Subsection (4) shall have effect in relation to a renewed authorisation or renewal notice as if the period of one month mentioned in that subsection did not begin until the end of the period of one month applicable to the authorisation or notice that is current at the time of the renewal.

(8) Where a person who has given a notice under subsection (4) of section 22 is satisfied—

(a) that it is no longer necessary on grounds falling within subsection (2) of that section for the requirements of the notice to be complied with, or

(b) that the conduct required by the notice is no longer proportionate to what is sought to be achieved by obtaining communications data to which the notice relates,

he shall cancel the notice.

(9) The Secretary of State may by regulations provide for the person by whom any duty imposed by subsection (8) is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it; and regulations under this subsection may provide for the person on whom the duty is to fall to be a person appointed in accordance with the regulations.

24 Arrangements for payments.

(1) It shall be the duty of the Secretary of State to ensure that such arrangements are in force as he thinks appropriate for requiring or authorising, in such cases as he thinks fit, the making to postal and telecommunications operators of appropriate contributions towards the costs incurred by them in complying with notices under section 22(4).

(2) For the purpose of complying with his duty under this section, the Secretary of State may make arrangements for payments to be made out of money provided by Parliament.

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25 Interpretation of Chapter II.

(1) In this Chapter—

"communications data" has the meaning given by section 21(4);

"designated" shall be construed in accordance with subsection (2);

"postal or telecommunications operator" means a person who provides a postal service or telecommunications service;

"relevant public authority" means (subject to subsection (4)) any of the following—

(a) a police force;

(b) **[**[F49]the Serious Organised Crime Agency;**]**

(ca) **[**[F50]the Scottish Crime and Drug Enforcement Agency;**]**

(d) **[**[F51]Her Majesty's Revenue and Customs;**]**

(f) any of the intelligence services;

(g) any such public authority not falling within paragraphs (a) to (f) as may be specified for the purposes of this subsection by an order made by the Secretary of State.

(2) Subject to subsection (3), the persons designated for the purposes of this Chapter are the individuals holding such offices, ranks or positions with relevant public authorities as are prescribed for the purposes of this subsection by an order made by the Secretary of State.

(3) The Secretary of State may by order impose restrictions—

(a) on the authorisations and notices under this Chapter that may be granted or given by any individual holding an office, rank or position with a specified public authority; and

(b) on the circumstances in which, or the purposes for which, such authorisations may be granted or notices given by any such individual.

[[F52](3A) References in this Chapter to an individual holding an office or position with the Serious Organised Crime Agency include references to any member of the staff of that Agency.**]**

[[F53](4) The Secretary of State may by order—

(a) remove any person from the list of persons who are for the time being relevant public authorities for the purposes of this Chapter; and

(b) make such consequential amendments, repeals or revocations in this or any other enactment as appear to him to be necessary or expedient.

(5) The Secretary of State shall not make an order under this section—

(a) that adds any person to the list of persons who are for the time being relevant public authorities for the purposes of this Chapter, or

(b) that by virtue of subsection (4)(b) amends or repeals any provision of an Act,

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.**]**

Textual Amendments

F49 S. 25(1): para. (b) in the definition of "relevant public authority" substituted (1.4.2006) for paras. (b) (c) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 135(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

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F50 S. 25(1): para (ca) in the definition of "relevant public authority" inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(5)**

F51 S. 25(1): para. (d) in the definition of "relevant public authority" substituted (15.2.2008) for paras. (d) (e) by Serious Crime Act 2007 (c. 27), ss. 88, 94 {Sch. 12 para. 8}; S.I. 2008/219, **art. 2(b)**

F52 S. 25(3A) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 135(3)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F53 S. 25(4)(5) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 135(4)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

PART II

SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES

Modifications etc. (not altering text)

C28 Pt. II (ss. 26-48) applied (with modifications)(16.3.2001) by S.I. 2001/1057, **arts. 2**, 3
Pt. II (ss. 26-48): power to apply (with modifications) conferred (1.10.2002) by 2002 c. 30, **s. 19(2)(a)**; S.I. 2002/2306, **art. 2(b)(v)**

C29 Pt. 2 modified (1.4.2004) by The Independent Police Complaints Commission (Investigatory Powers) Order 2004 (S.I. 2004/815), **art. 3** (as amended (E.W.) (8.1.2018) by The Independent Office for Police Conduct (Transitional and Consequential) Regulations 2017 (S.I. 2017/1250), regs. 1, **10(6)** (with reg. 37))

Introductory

26 Conduct to which Part II applies.

(1) This Part applies to the following conduct—
- (a) directed surveillance;
- (b) intrusive surveillance; and
- (c) the conduct and use of covert human intelligence sources.

(2) Subject to subsection (6), surveillance is directed for the purposes of this Part if it is covert but not intrusive and is undertaken—
- (a) for the purposes of a specific investigation or a specific operation;
- (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance.

(3) Subject to subsections (4) to (6), surveillance is intrusive for the purposes of this Part if, and only if, it is covert surveillance that—
- (a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and

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(b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

(4) For the purposes of this Part surveillance is not intrusive to the extent that—

(a) it is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle; or

(b) it is surveillance consisting in any such interception of a communication as falls within section 48(4).

(5) For the purposes of this Part surveillance which—

(a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle, but

(b) is carried out without that device being present on the premises or in the vehicle,

is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

(6) For the purposes of this Part surveillance which—

(a) is carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use in any residential or other premises of a television receiver (within the meaning of **[**[F54]Part 4 of the Communications Act 2003)**]** , and

(b) is carried out from outside those premises exclusively for that purpose,

is neither directed nor intrusive.

(7) In this Part—

(a) references to the conduct of a covert human intelligence source are references to any conduct of such a source which falls within any of paragraphs (a) to (c) of subsection (8), or is incidental to anything falling within any of those paragraphs; and

(b) references to the use of a covert human intelligence source are references to inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source.

(8) For the purposes of this Part a person is a covert human intelligence source if—

(a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);

(b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or

(c) he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

(9) For the purposes of this section—

(a) surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place;

(b) a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a

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manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose; and

(c) a relationship is used covertly, and information obtained as mentioned in subsection (8)(c) is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

(10) In this section "private information", in relation to a person, includes any information relating to his private or family life.

(11) References in this section, in relation to a vehicle, to the presence of a surveillance device in the vehicle include references to its being located on or under the vehicle and also include references to its being attached to it.

Textual Amendments

F54 Words in s. 26(6)(a) substituted (1.4.2004) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 17 para. 161(2)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 4(2)**, Sch. 2

Authorisation of surveillance and human intelligence sources

27 Lawful surveillance etc.

(1) Conduct to which this Part applies shall be lawful for all purposes if—

(a) an authorisation under this Part confers an entitlement to engage in that conduct on the person whose conduct it is; and

(b) his conduct is in accordance with the authorisation.

(2) A person shall not be subject to any civil liability in respect of any conduct of his which—

(a) is incidental to any conduct that is lawful by virtue of subsection (1); and

(b) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question.

(3) The conduct that may be authorised under this Part includes conduct outside the United Kingdom.

(4) In this section "relevant enactment" means—

(a) an enactment contained in this Act;

(b) section 5 of the [M30]Intelligence Services Act 1994 (warrants for the intelligence services); or

(c) an enactment contained in Part III of the [M31]Police Act 1997 (powers of the police and of **[**[F55]officers of Revenue and Customs).**]**

Textual Amendments

F55 Words in s. 27(4)(c) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 9**; S.I. 2008/219, **art. 2(b)**

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Marginal Citations

M30 1994 c. 13.

M31 1997 c. 50.

28 Authorisation of directed surveillance.

(1) Subject to the following provisions of this Part, the persons designated for the purposes of this section shall each have power to grant authorisations for the carrying out of directed surveillance.

(2) A person shall not grant an authorisation for the carrying out of directed surveillance unless he believes—

(a) that the authorisation is necessary on grounds falling within subsection (3); and

(b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(3) An authorisation 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 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 an order made by the Secretary of State.

(4) The conduct that is authorised by an authorisation for the carrying out of directed surveillance is any conduct that—

(a) consists in the carrying out of directed surveillance of any such description as is specified in the authorisation; and

(b) is carried out in the circumstances described in the authorisation and for the purposes of the investigation or operation specified or described in the authorisation.

(5) The Secretary of State shall not make an order under subsection (3)(g) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

29 Authorisation of covert human intelligence sources.

(1) Subject to the following provisions of this Part, the persons designated for the purposes of this section shall each have power to grant authorisations for the conduct or the use of a covert human intelligence source.

(2) A person shall not grant an authorisation for the conduct or the use of a covert human intelligence source unless he believes—

(a) that the authorisation is necessary on grounds falling within subsection (3);

(b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use; and

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(c) that arrangements exist for the source's case that satisfy the requirements of subsection (5) and such other requirements as may be imposed by order made by the Secretary of State.

(3) An authorisation 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 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 an order made by the Secretary of State.

(4) The conduct that is authorised by an authorisation for the conduct or the use of a covert human intelligence source is any conduct that—

(a) is comprised in any such activities involving conduct of a covert human intelligence source, or the use of a covert human intelligence source, as are specified or described in the authorisation;

(b) consists in conduct by or in relation to the person who is so specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and

(c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

(5) For the purposes of this Part there are arrangements for the source's case that satisfy the requirements of this subsection if such arrangements are in force as are necessary for ensuring—

(a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare;

(b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;

(c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source;

(d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and

(e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

(6) The Secretary of State shall not make an order under subsection (3)(g) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(7) The Secretary of State may by order—

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(a) prohibit the authorisation under this section of any such conduct or uses of covert human intelligence sources as may be described in the order; and

(b) impose requirements, in addition to those provided for by subsection (2), that must be satisfied before an authorisation is granted under this section for any such conduct or uses of covert human intelligence sources as may be so described.

(8) In this section "relevant investigating authority", in relation to an authorisation for the conduct or the use of an individual as a covert human intelligence source, means (subject to subsection (9)) the public authority for whose benefit the activities of that individual as such a source are to take place.

(9) In the case of any authorisation for the conduct or the use of a covert human intelligence source whose activities are to be for the benefit of more than one public authority, the references in subsection (5) to the relevant investigating authority are references to one of them (whether or not the same one in the case of each reference).

Modifications etc. (not altering text)

C30 S. 29(2)(c) modified (6.11.2000) by S.I. 2000/2793, **art. 4**

30 Persons entitled to grant authorisations under ss. 28 and 29.

(1) Subject to subsection (3), the persons designated for the purposes of sections 28 and 29 are the individuals holding such offices, ranks or positions with relevant public authorities as are prescribed for the purposes of this subsection by an order under this section.

(2) For the purposes of the grant of an authorisation that combines—

(a) an authorisation under section 28 or 29, and

(b) an authorisation by the Secretary of State for the carrying out of intrusive surveillance,

the Secretary of State himself shall be a person designated for the purposes of that section.

(3) An order under this section may impose restrictions—

(a) on the authorisations under sections 28 and 29 that may be granted by any individual holding an office, rank or position with a specified public authority; and

(b) on the circumstances in which, or the purposes for which, such authorisations may be granted by any such individual.

(4) A public authority is a relevant public authority for the purposes of this section—

(a) in relation to section 28 if it is specified in Part I or II of Schedule 1; and

(b) in relation to section 29 if it is specified in Part I of that Schedule.

(5) An order under this section may amend Schedule 1 by—

(a) adding a public authority to Part I or II of that Schedule;

(b) removing a public authority from that Schedule;

(c) moving a public authority from one Part of that Schedule to the other;

(d) making any change consequential on any change in the name of a public authority specified in that Schedule.

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(6) Without prejudice to section 31, the power to make an order under this section shall be exercisable by the Secretary of State.

(7) The Secretary of State shall not make an order under subsection (5) containing any provision for—
   (a) adding any public authority to Part I or II of that Schedule, or
   (b) moving any public authority from Part II to Part I of that Schedule,

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

31 Orders under s. 30 for Northern Ireland.

(1) Subject to subsections (2) and (3), the power to make an order under section 30 for the purposes of the grant of authorisations for conduct in Northern Ireland shall be exercisable by the Office of the First Minister and deputy First Minister in Northern Ireland (concurrently with being exercisable by the Secretary of State).

(2) The power of the Office of the First Minister and deputy First Minister to make an order under section 30 by virtue of subsection (1) or (3) of that section shall not be exercisable in relation to any public authority other than—
   (a) the Food Standards Agency;
   [F56](b) . . . . . .
   (c) an authority added to Schedule 1 by an order made by that Office;
   (d) an authority added to that Schedule by an order made by the Secretary of State which it would (apart from that order) have been within the powers of that Office to add to that Schedule for the purposes mentioned in subsection (1) of this section.

(3) The power of the Office of the First Minister and deputy First Minister to make an order under section 30—
   (a) shall not include power to make any provision dealing with an excepted matter;
   (b) shall not include power, except with the consent of the Secretary of State, to make any provision dealing with a reserved matter.

(4) The power of the Office of the First Minister and deputy First Minister to make an order under section 30 shall be exercisable by statutory rule for the purposes of the [M32]Statutory Rules (Northern Ireland) Order 1979.

(5) A statutory rule containing an order under section 30 which makes provision by virtue of subsection (5) of that section for—
   (a) adding any public authority to Part I or II of Schedule 1, or
   (b) moving any public authority from Part II to Part I of that Schedule,

shall be subject to affirmative resolution (within the meaning of section 41(4) of the [M33]Interpretation Act (Northern Ireland) 1954).

(6) A statutory rule containing an order under section 30 (other than one to which subsection (5) of this section applies) shall be subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).

(7) An order under section 30 made by the Office of the First Minister and deputy First Minister may—

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(a) make different provision for different cases;
(b) contain such incidental, supplemental, consequential and transitional provision as that Office thinks fit.

(8) The reference in subsection (2) to an addition to Schedule 1 being within the powers of the Office of the First Minister and deputy First Minister includes a reference to its being within the powers exercisable by that Office with the consent for the purposes of subsection (3)(b) of the Secretary of State.

(9) In this section "excepted matter" and "reserved matter" have the same meanings as in the [M34]Northern Ireland Act 1998; and, in relation to those matters, section 98(2) of that Act (meaning of "deals with") applies for the purposes of this section as it applies for the purposes of that Act.

Textual Amendments

F56 S. 31(2)(b) repealed (15.11.2001) by S.I. 2001/3686, **art. 6(17)(a)** (with art. 8)

Marginal Citations

M32 S.I. 1979/1573 (N.I. 12).
M33 1954 c. 33 (N.I.).
M34 1998 c. 47.

32 Authorisation of intrusive surveillance.

(1) Subject to the following provisions of this Part, the Secretary of State and each of the senior authorising officers shall have power to grant authorisations for the carrying out of intrusive surveillance.

(2) Neither the Secretary of State nor any senior authorising officer shall grant an authorisation for the carrying out of intrusive surveillance unless he believes—
(a) that the authorisation is necessary on grounds falling within subsection (3); and
(b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(3) Subject to the following provisions of this section, an authorisation 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 serious crime; or
(c) in the interests of the economic well-being of the United Kingdom.

[[F57](3A) In the case of an authorisation granted by the chairman of the OFT, the authorisation is necessary on grounds falling within subsection (3) only if it is necessary for the purpose of preventing or detecting an offence under section 188 of the Enterprise Act 2002 (cartel offence).**]**

(4) 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 the information which it is thought necessary to obtain by the authorised conduct could reasonably be obtained by other means.

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(5) The conduct that is authorised by an authorisation for the carrying out of intrusive surveillance is any conduct that—

(a) consists in the carrying out of intrusive surveillance of any such description as is specified in the authorisation;

(b) is carried out in relation to the residential premises specified or described in the authorisation or in relation to the private vehicle so specified or described; and

(c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

(6) For the purposes of this section the senior authorising officers are—

(a) the chief constable of every police force maintained under section 2 of the [M35]Police Act 1996 (police forces in England and Wales outside London);

(b) the Commissioner of Police of the Metropolis and every Assistant Commissioner of Police of the Metropolis;

(c) the Commissioner of Police for the City of London;

(d) the chief constable of every police force maintained under or by virtue of section 1 of the [M36]Police (Scotland) Act 1967 (police forces for areas in Scotland);

(e) the Chief Constable of the Royal Ulster Constabulary and the Deputy Chief Constable of the Royal Ulster Constabulary;

(f) the Chief Constable of the Ministry of Defence Police;

(g) the Provost Marshal of the **[**[F58]Royal Navy Police**]** ;

(h) the Provost Marshal of the Royal Military Police;

(i) the Provost Marshal of the Royal Air Force Police;

(j) the Chief Constable of the British Transport Police;

[[F59](k) the Director General of the Serious Organised Crime Agency and any member of the staff of that Agency who is designated for the purposes of this paragraph by that Director General;**]**

[[F60](m) an officer of Revenue and Customs who is a senior official and who is designated for the purposes of this paragraph by the Commissioners for Her Majesty's Revenue and Customs;**]**

(n) the chairman of the OFT.

Textual Amendments

F57 S. 32(3A) inserted (20.6.2003) by 2002 c. 40, ss. 199(2)(a), 27; S.I. 2003/1397, **art. 2(1)**, Sch.

F58 Words in s. 32(6)(g) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 170**; S.I. 2007/1442, **art. 2(1)**

F59 S. 32(6)(k) substituted for s. 32(6)(k)(l) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 136**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F60 S. 32(6)(m) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 10**; S.I. 2008/219, **art. 2(b)**

Modifications etc. (not altering text)

C31 S. 32 modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 4(1)** (with art. 6)

C32 S. 32: functions transferred to the Scottish Ministers (15.12.2000) by virtue of S.I. 2000/3253 arts. 1(1)(3), 3, Sch. 2 (with art. 6)

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Marginal Citations

M35 1996 c. 16.

M36 1967 c. 77.

Police and [F61 Revenue and Customs] authorisations

Textual Amendments

F61 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[F62]. . . shall not grant an authorisation under that section except on an application made by a member of the same force [F63]. . . .

[[F64](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 Serious Organised Crime Agency shall not grant an authorisation under that section except on an application made by a member of the staff of the Agency.]

[[F65](1B) A person who is a designated person for the purposes of section 28 or 29 by reference to his office, rank or position with the Scottish Crime and Drug Enforcement Agency shall not grant an authorisation under that section except on an application made by a police member of the Agency.]

[[F66](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) A person who is a senior authorising officer by reference to a police force [F67]. . . 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 [F68]. . . ; 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 [F68]. . . .

[[F69](3A) The Director General of the Serious Organised 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 member of the staff of the Agency.]

[[F70](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.]

[[F71](4A) The chairman of the OFT shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of the OFT.]

(5) A single authorisation may combine both—

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(a) an authorisation granted under this Part by, or on the application of, an individual who is a member of a police force, **[**[F72]a member of the staff of the Serious Organised Crime Agency **[**[F73]or a member of the Scottish Crime and Drug Enforcement Agency**]** ,**]** or who is **[**[F74]an officer of Revenue and Customs**][**[F75]or the chairman or an officer of the OFT**]**; and

(b) an authorisation given by, or on the application of, that individual under Part III of the [M37]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.

(6) For the purposes of this section—

(a) the area of operation of a police force maintained under section 2 of the [M38]Police Act 1996, of the metropolitan police force, of the City of London police force or of a police force maintained under or by virtue of section 1 of the [M39]Police (Scotland) Act 1967 is the area for which that force is maintained;

(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 section 2 of the [M40]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 **[**[F76]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 [F77]. . . is the United Kingdom;

(f) [F78]. . . . . .

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.

(7) 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 [M41]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 [M42]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 [M43]Air Force Act 1955 for the time being applies by virtue of section 209 of that Act.

Textual Amendments

F62 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))

F63 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))

F64 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))

F65 S. 33(1B) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(6)(a)**

F66 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)**

F67 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))

F68 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))

F69 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))

F70 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)**

F71 S. 33(4A) inserted (20.6.2003) by 2002 c. 40, ss. 199(3), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

F72 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))

F73 Words in s. 33(5)(a) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(6)(b)**

F74 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)**

F75 Words in s. 33(5)(a) inserted (20.6.2003) by 2002 c. 40, ss. 199(4), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

F76 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)**

F77 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))

F78 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))

Marginal Citations

M37 1997 c. 50.
M38 1996 c. 16.
M39 1967 c. 77.
M40 1987 c. 4.
M41 1957 c. 53.
M42 1955 c. 18.
M43 1955 c. 19.

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—

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(a) the application is one made by a member of a police force, **[**[F79]a member of the staff of the Serious Organised Crime Agency**]** or by **[**[F80]an officer of the OFT or**][**[F81]an officer of Revenue and Customs;**]** 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 officer by reference to the force **[**[F82]or Agency**]** in question or, as the case may be, **[**[F83]as chairman of the OFT or**]**by virtue of a designation by **[**[F84]the Commissioners for Her Majesty's Revenue and Customs,**]** 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 [M44]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 a police force maintained under or by virtue of section 1 of the [M45]Police (Scotland) Act 1967 if he holds the rank of assistant chief constable in that force;

(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 **[**[F85]Royal Navy Police**]** if he holds the position of assistant Provost Marshal in **[**[F86]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;

[[F87](j) a person is entitled to act for the Director General of the Serious Organised 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;**]**

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(l) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation by **[**[F88]the Commissioners for Her Majesty's Revenue and Customs,**]** if he is **[**[F89]a senior official**]** designated for the purposes of this paragraph by those Commissioners as a person entitled so to act in an urgent case.

[[F90](m) a person is entitled to act for the chairman of the OFT if he is an officer of the OFT designated by it for the purposes of this paragraph as a person entitled so to act in an urgent case.**]**

(5) [F91]. . . . . .

(6) In this section "designated deputy"—

[[F92](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 for a police force in Scotland, means—

(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 [M46]City of London Police Act 1839;

(c) [F93]. . . . . .

Textual Amendments

F79 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))

F80 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.

F81 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)**

F82 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))

F83 Words in s. 34(2)(a) inserted (20.6.2003) by 2002 c. 40, ss. 199(5)(b), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

F84 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)**

F85 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)**

F86 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)**

F87 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))

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F88 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)**

F89 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)**

F90 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.

F91 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))

F92 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**

F93 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

M44 1996 c. 16.

M45 1967 c. 77.

M46 1839 c. xciv.

35 Notification of authorisations for intrusive surveillance.

(1) Where a person grants or cancels a **[**[F94]police, SOCA, **[**[F95]Revenue and Customs**]][**[F96]or OFT**]** authorisation for the carrying out of intrusive surveillance, he shall give notice that he has done so to an ordinary Surveillance 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;

(b) must be given in accordance with any such arrangements made for the purposes of this paragraph by the Chief Surveillance 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 Surveillance 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 an ordinary Surveillance 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).

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(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 **[**[F97]police, SOCA, **[**[F98]Revenue and Customs**]][**[F96]or OFT**]** authorisation are references to an authorisation granted by—

(a) a person who is a senior authorising officer by reference to a police force **[**[F99]or the Serious Organised Crime Agency**]** ;

(b) a person who is a senior authorising officer by virtue of a designation by **[**[F100]the Commissioners for Her Majesty's Revenue and Customs;**]**[F101]. . .

[[F102](ba) the chairman of the OFT; 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) **[**[F103]or for a person falling within paragraph (ba).**]**.

Textual Amendments

F94 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))

F95 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)**

F96 Words in s. 35(1)(10) substituted (20.6.2003) by 2002 c. 40, ss. 199(6)(a), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

F97 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))

F98 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)**

F99 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))

F100 Words in s. 35(10)(b) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 13(c)**; S.I. 2008/219, **art. 2(b)**

F101 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)

F102 S. 35(10)(ba) inserted (20.6.2003) by 2002 c. 40, ss. 199(6)(b), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

F103 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.

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—

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(a) a member of a police force;

[[F104](b) a member of the staff of the Serious Organised Crime Agency;**]**

[[F105](d) an officer of Revenue and Customs;**]**

(e) an officer of the OFT.

(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 an ordinary Surveillance 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 Surveillance 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 Surveillance 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 an ordinary Surveillance 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 Director General of the **[**[F106]Serious Organised 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;

[[F107](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 Director General of the Serious Organised Crime Agency by virtue of section 34(4)(j), that Director General;**]**

(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; **[**[F108]and**]**

[[F109](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 Chief

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Surveillance Commissioner by the Commissioners for Her Majesty's Revenue and Customs;**]**

(h) where the authorisation was granted by the chairman of the OFT or a person entitled to act for him by virtue of section 34(4)(m), that chairman.

(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 [M47]Police Act 1996,

(ii) the Commissioner of Police for the City of London, or

(iii) a chief constable of a police force maintained under or by virtue of section 1 of the [M48]Police (Scotland) Act 1967,

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

F104 S. 36(1)(b) substituted (1.4.2006) for s. 36(1)(b)(c) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 140(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F105 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)**

F106 Words in s. 36(6)(b) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 140(3)(a)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F107 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))

F108 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)

F109 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)**

Marginal Citations

M47 1996 c. 16.

M48 1967 c. 77.

37 Quashing of police and [F110Revenue 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;

[F111(b) a member of the staff of the Serious Organised Crime Agency;**]**

[F112(d) an officer of Revenue and Customs;**]**

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(e) an officer of the OFT.

(2) Where an ordinary Surveillance 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 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 an ordinary Surveillance 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), an ordinary Surveillance 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 authorisatio

(5) Subject to subsection (7), where an ordinary Surveillance 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) an ordinary Surveillance 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 an ordinary Surveillance 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 Chief Surveillance 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) the 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 Chief Surveillance 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

F110 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)**

F111 S. 37(1)(b) substituted (1.4.2006) for s. 37(1)(b)(c) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 141**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F112 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)**

38 Appeals against decisions by Surveillance Commissioners.

(1) Any senior authorising officer may appeal to the Chief Surveillance Commissioner against any of the following—

(a) any refusal of an ordinary Surveillance 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 Chief Surveillance Commissioner, on an appeal under this section, shall allow the appeal if—

(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 Chief Surveillance 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 ordinary Surveillance 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 Chief Surveillance Commissioner allows the appeal he shall also

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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.

39 Appeals to the Chief Surveillance Commissioner: supplementary.

(1) Where the Chief Surveillance 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 ordinary Surveillance Commissioner whose decision was appealed against.

(2) Where the determination of the Chief Surveillance Commissioner on an appeal under section 38 is a determination to dismiss the appeal, the Chief Surveillance Commissioner shall make a report of his findings—
  (a) to the persons mentioned in subsection (1); and
  (b) to the Prime Minister.

(3) Subsections (3) and (4) of section 107 of the [M49]Police Act 1997 (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 subsection (2) of that section.

(4) Subject to subsection (2) of this section, the Chief Surveillance Commissioner shall not give any reasons for any determination of his on an appeal under section 38.

Marginal Citations

M49 1997 c. 50.

40 Information to be provided to Surveillance Commissioners.

It shall be the duty of—
  (a) every member of a police force,
  [[F113](b) every member of the staff of the Serious Organised Crime Agency,**]**
  [[F114](d) every officer of Revenue and Customs,**]**
  (e) every officer of the OFT,

to comply with any request of a Surveillance Commissioner for documents or information required by that Commissioner for the purpose of enabling him to carry out the functions of such a Commissioner under sections 35 to 39.

Textual Amendments

F113 S. 40(b) substituted (1.4.2006) for s. 40(b)(c) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 142**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F114 S. 40(d) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 16**; S.I. 2008/219, **art. 2(b)**

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Other authorisations

41 Secretary of State authorisations.

(1) The Secretary of State shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by—
  (a) a member of any of the intelligence services;
  (b) an official of the Ministry of Defence;
  (c) a member of Her Majesty's forces;
  (d) an individual holding an office, rank or position with any such public authority as may be designated for the purposes of this section as an authority whose activities may require the carrying out of intrusive surveillance.

(2) Section 32 shall have effect in relation to the grant of an authorisation by the Secretary of State on the application of an official of the Ministry of Defence, or of a member of Her Majesty's forces, as if the only matters mentioned in subsection (3) of that section were—
  (a) the interests of national security; and
  (b) the purpose of preventing or detecting serious crime.

(3) The designation of any public authority for the purposes of this section shall be by order made by the Secretary of State.

(4) The Secretary of State may by order provide, in relation to any public authority, that an application for an authorisation for the carrying out of intrusive surveillance may be made by an individual holding an office, rank or position with that authority only where his office, rank or position is one prescribed by the order.

(5) The Secretary of State may by order impose restrictions—
  (a) on the authorisations for the carrying out of intrusive surveillance that may be granted on the application of an individual holding an office, rank or position with any public authority designated for the purposes of this section; and
  (b) on the circumstances in which, or the purposes for which, such authorisations may be granted on such an application.

(6) The Secretary of State shall not make a designation under subsection (3) unless a draft of the order containing the designation has been laid before Parliament and approved by a resolution of each House.

(7) References in this section to a member of Her Majesty's forces do not include references to any member of Her Majesty's forces who is a member of a police force by virtue of his service with the **[**[F115]Royal Navy Police**]** , the Royal Military Police or the Royal Air Force Police.

Textual Amendments

F115 Words in s. 41(7) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 173**; S.I. 2007/1442, **art. 2(1)**

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42 Intelligence services authorisations.

(1) The grant by the Secretary of State **[**[F116]or, the Scottish Ministers (by virtue of provision under section 63 of the Scotland Act 1998)**]** on the application of a member of one of the intelligence services of any authorisation under this Part must be made by the issue of a warrant.

(2) A single warrant issued by the Secretary of State **[**[F116]or, the Scottish Ministers (by virtue of provision under s. 63 of the Scotland Act 1998)**]**may combine both—

(a) an authorisation under this Part; and

(b) an intelligence services warrant;

but the provisions of this Act or the [M50]Intelligence Services Act 1994 that are applicable in the case of the authorisation under this Part or the intelligence services warrant shall apply separately in relation to the part of the combined warrant to which they are applicable.

(3) Intrusive surveillance in relation to any premises or vehicle in the British Islands shall be capable of being authorised by a warrant issued under this Part on the application of a member of the Secret Intelligence Service or GCHQ only if the authorisation contained in the warrant is one satisfying the requirements of section 32(2)(a) otherwise than in connection with any functions of that intelligence service in support of the prevention or detection of serious crime.

(4) Subject to subsection (5), the functions of the Security Service shall include acting on behalf of the Secret Intelligence Service or GCHQ in relation to—

(a) the application for and grant of any authorisation under this Part in connection with any matter within the functions of the Secret Intelligence Service or GCHQ; and

(b) the carrying out, in connection with any such matter, of any conduct authorised by such an authorisation.

(5) Nothing in subsection (4) shall authorise the doing of anything by one intelligence service on behalf of another unless—

(a) it is something which either the other service or a member of the other service has power to do; and

(b) it is done otherwise than in connection with functions of the other service in support of the prevention or detection of serious crime.

(6) In this section "intelligence services warrant" means a warrant under section 5 of the [M51]Intelligence Services Act 1994.

Textual Amendments

F116 Words in s 42(1)(2) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 7(a)(b)** (with art. 6)

Modifications etc. (not altering text)

C33 S. 42 modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 4(1)** (with art. 6)

C34 S. 42: functions transferred to the Scottish Ministers (S.) (15.12.2000) by virtue of S.I. 2000/3253, arts. 1(1)(3), 3, **Sch. 2** (with art. 6)

Marginal Citations

M50 1994 c. 13.

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M51 1994 c. 13.

Grant, renewal and duration of authorisations

43 General rules about grant, renewal and duration.

(1) An authorisation under this Part—
- (a) may be granted or renewed orally in any urgent case in which the entitlement to act of the person granting or renewing it is not confined to urgent cases; and
- (b) in any other case, must be in writing.

(2) A single authorisation may combine two or more different authorisations under this Part; but the provisions of this 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.

(3) Subject to subsections (4) and (8), an authorisation under this Part shall cease to have effect at the end of the following period—
- (a) in the case of an authorisation which—
  - (i) has not been renewed and was granted either orally or by a person whose entitlement to act is confined to urgent cases, or
  - (ii) was last renewed either orally or by such a person,

  the period of seventy-two hours beginning with the time when the grant of the authorisation or, as the case may be, its latest renewal takes effect;
- (b) in a case not falling within paragraph (a) in which the authorisation is for the conduct or the use of a covert human intelligence source, the period of twelve months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect; and
- (c) in any case not falling within paragraph (a) or (b), the period of three months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect.

(4) Subject to subsection (6), an authorisation under this Part may be renewed, at any time before the time at which it ceases to have effect, by any person who would be entitled to grant a new authorisation in the same terms.

(5) Sections 28 to 41 shall have effect in relation to the renewal of an authorisation under this Part as if references to the grant of an authorisation included references to its renewal.

(6) A person shall not renew an authorisation for the conduct or the use of a covert human intelligence source, unless he—
- (a) is satisfied that a review has been carried out of the matters mentioned in subsection (7); and
- (b) has, for the purpose of deciding whether he should renew the authorisation, considered the results of that review.

(7) The matters mentioned in subsection (6) are—
- (a) the use made of the source in the period since the grant or, as the case may be, latest renewal of the authorisation; and
- (b) the tasks given to the source during that period and the information obtained from the conduct or the use of the source.

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(8) The Secretary of State may by order provide in relation to authorisations of such descriptions as may be specified in the order that subsection (3) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by that subsection as may be fixed by or determined in accordance with that order.

(9) References in this section to the time at which, or the day on which, the grant or renewal of an authorisation takes effect are references—

(a) in the case of the grant of an authorisation to which paragraph (c) does not apply, to the time at which or, as the case may be, day on which the authorisation is granted;

(b) in the case of the renewal of an authorisation to which paragraph (c) does not apply, to the time at which or, as the case may be, day on which the authorisation would have ceased to have effect but for the renewal; and

(c) in the case of any grant or renewal that takes effect under subsection (2) of section 36 at a time or on a day later than that given by paragraph (a) or (b), to the time at which or, as the case may be, day on which the grant or renewal takes effect in accordance with that subsection.

(10) In relation to any authorisation granted by a member of any of the intelligence services, and in relation to any authorisation contained in a warrant issued by the Secretary of State on the application of a member of any of the intelligence services, this section has effect subject to the provisions of section 44.

Modifications etc. (not altering text)

C35 S. 43(3) modified (6.11.2000) by S.I. 2000/2793, **art. 6** (as amended (10.8.2021 for specified purposes, 15.9.2021 for specified purposes, 30.9.2021 in so far as not already in force) by Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (c. 4), **ss. 2(7)**, 9(2) (with s. 2(9)); S.I. 2021/605, reg. 2(a)(b)(c))
S.43 applied (with modifications) (16.3.2001) by S.I. 2001/1057, **art. 4**

C36 S. 43(3) modified (1.2.2010) by The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2009 (S.I. 2009/3404), **art. 8**

C37 S. 43(3) modified (18.2.2010) by The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010 (S.I. 2010/123), **art. 8**

44 Special rules for intelligence services authorisations.

(1) Subject to subsection (2), a warrant containing an authorisation for the carrying out of intrusive surveillance—

(a) shall not be issued on the application of a member of any of the intelligence services, and

(b) if so issued shall not be renewed,

except under the hand of the Secretary of State **[**[F117]or, in the case of a warrant issued by the Scottish Ministers(by virtue of provision made under section 63 of the Scotland Act 1998), a member of the Scottish Executive.**]**

(2) In an urgent case in which—

(a) an application for a warrant containing an authorisation for the carrying out of intrusive surveillance has been made by a member of any of the intelligence services, and

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(b) the Secretary of State has himself **[**[F118]or the Scottish Ministers(by virtue of provision made under section 63 of the Scotland Act 1998) have themselves**]** expressly authorised the issue of the warrant in that case,

the warrant may be issued (but not renewed) under the hand of a senior official **[**[F119] or as the case may be, a member of the staffof the Scottish Administration who is a member of the Senior Civil Service and is designated by the Scottish Ministers as a person under whose hand a warrant may be issued in such a case (in this section referred to as "a designated official")**]**

(3) Subject to subsection (6), a warrant containing an authorisation for the carrying out of intrusive surveillance which—

(a) was issued, on the application of a member of any of the intelligence services, under the hand of a senior official **[**[F120]or, as the case may be, a designated official**]** and

(b) has not been renewed under the hand of the Secretary of State **[**[F121]or, in the case of a warrant issued by the Scottish Ministers (by virtue of provision made under section 3 of the Scotalnd Act 1998), a member of the Scottish Executive**]**,

shall cease to have effect at the end of the second working day following the day of the issue of the warrant, instead of at the time provided for by section 43(3).

(4) Subject to subsections (3) and (6), where any warrant for the carrying out of intrusive surveillance which is issued or was last renewed on the application of a member of any of the intelligence services, the warrant (unless renewed or, as the case may be, renewed again) shall cease to have effect at the following time, instead of at the time provided for by section 43(3), namely—

(a) in the case of a warrant that has not been renewed, at the end of the period of six months beginning with the day on which it was issued; and

(b) in any other case, at the end of the period of six months beginning with the day on which it would have ceased to have effect if not renewed again.

(5) Subject to subsection (6), where—

(a) an authorisation for the carrying out of directed surveillance is granted by a member of any of the intelligence services, and

(b) the authorisation is renewed by an instrument endorsed under the hand of the person renewing the authorisation with a statement that the renewal is believed to be necessary on grounds falling within section 32(3)(a) or (c),

the authorisation (unless renewed again) shall cease to have effect at the end of the period of six months beginning with the day on which it would have ceased to have effect but for the renewal, instead of at the time provided for by section 43(3).

(6) The Secretary of State may by order provide in relation to authorisations of such descriptions as may be specified in the order that subsection (3), (4) or (5) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by that subsection as may be fixed by or determined in accordance with that order.

(7) Notwithstanding anything in section 43(2), in a case in which there is a combined warrant containing both—

(a) an authorisation for the carrying out of intrusive surveillance, and

(b) an authorisation for the carrying out of directed surveillance,

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the reference in subsection (4) of this section to a warrant for the carrying out of intrusive surveillance is a reference to the warrant so far as it confers both authorisations.

Textual Amendments

F117 Words in s. 44(1) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 8(a)** (with art. 6)

F118 Words in s. 44(2) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 8(b)(i)** (with art. 6)

F119 Words inserted at the end of s. 44(2) (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 8(b)(ii)** (with art. 6)

F120 Words in s. 44(3)(a) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 8(c)(i)** (with art. 6)

F121 Words in s. 44(3)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 8(c)(ii)** (with art. 6)

Modifications etc. (not altering text)

C38 S. 44(1)(2)(b) modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 5** (with art. 6)

C39 S. 44(1)(2)(b): functions transferred to the Scottish Ministers (S.) (15.12.2000) by virtue of S.I. 2000/3253, arts. 1(1)(3), 3, **Sch. 2** (with art. 6)

45 Cancellation of authorisations.

(1) The person who granted or, as the case may be, last renewed an authorisation under this Part shall cancel it if—

(a) he is satisfied that the authorisation is one in relation to which the requirements of section 28(2)(a) and (b), 29(2)(a) and (b) or, as the case may be, 32(2)(a) and (b) are no longer satisfied; or

(b) in the case of an authorisation under section 29, he is satisfied that arrangements for the source's case that satisfy the requirements mentioned in subsection (2)(c) of that section no longer exist.

(2) Where an authorisation under this Part was granted or, as the case may be, last renewed—

(a) by a person entitled to act for any other person, or

(b) by the deputy of any other person,

that other person shall cancel the authorisation if he is satisfied as to either of the matters mentioned in subsection (1).

(3) Where an authorisation under this Part was granted or, as the case may be, last renewed by a person whose deputy had power to grant it, that deputy shall cancel the authorisation if he is satisfied as to either of the matters mentioned in subsection (1).

(4) The Secretary of State may by regulations provide for the person by whom any duty imposed by this section is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it.

(5) Regulations under subsection (4) may provide for the person on whom the duty is to fall to be a person appointed in accordance with the regulations.

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(6) The references in this section 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 [M52]Police Act 1996,

(ii) the Commissioner of Police for the City of London, or

(iii) a chief constable of a police force maintained under or by virtue of section 1 of the [M53]Police (Scotland) Act 1967,

to his designated deputy;

(b) in relation to the Commissioner of Police of the Metropolis, to an Assistant Commissioner of Police of the Metropolis;[F122]. . .

(c) in relation to the Chief Constable of the Royal Ulster Constabulary, to the Deputy Chief Constable of the Royal Ulster Constabulary**[**[F123]; and

(ca) in relation to the Director General of the Scottish Crime and Drug Enforcement Agency, to the Deputy Director General of that Agency;**]**

(d) [F124]. . . . . .

(e) [F124]. . . . . .

(7) In this section "designated deputy" has the same meaning as in section 34.

Textual Amendments

F122 Word in s. 45(6)(b) omitted (1.4.2007) by virtue of The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(7)(a)**

F123 S. 45(6)(ca) and word inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(7)(b)**

F124 S. 45(6)(d)(e) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174, 178, Sch. 4 para. 143(b), **Sch. 17**; S.I. 2006/378, **art. 4(1)**, Sch. paras. 10, 13(hh) (subject to art. 4(2)-(7))

Modifications etc. (not altering text)

C40 S. 45 applied (with modifications) (16.3.2001) by S.I. 2001/1057, **art. 5**

C41 S. 45(1): functions transferred to the Scottish Ministers (15.12.2000) by virtue of S.I. 2000/3253, arts. 1(1)(3), 3, **Sch. 2** (with art. 6)

C42 S. 45(1)(a) modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1), 2, **Sch. 1 para. 5** (with art. 6)

Marginal Citations

M52 1996 c. 16.

M53 1967 c. 77.

Scotland

46 Restrictions on authorisations extending to Scotland.

(1) No person shall grant or renew an authorisation under this Part for the carrying out of any conduct if it appears to him—

(a) that the authorisation is not one for which this Part is the relevant statutory provision for all parts of the United Kingdom; and

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(b) that all the conduct authorised by the grant or, as the case may be, renewal of the authorisation is likely to take place in Scotland.

(2) In relation to any authorisation, this Part is the relevant statutory provision for all parts of the United Kingdom in so far as it—

(a) is granted or renewed on the grounds that it is necessary in the interests of national security or in the interests of the economic well-being of the United Kingdom;

(b) is granted or renewed by or on the application of a person holding any office, rank or position with any of the public authorities specified in subsection (3);

(c) authorises conduct of a person holding an office, rank or position with any of the public authorities so specified;

(d) authorises conduct of an individual acting as a covert human intelligence source for the benefit of any of the public authorities so specified; or

(e) authorises conduct that is surveillance by virtue of section 48(4).

(3) The public authorities mentioned in subsection (2) are—

(a) each of the intelligence services;

(b) Her Majesty's forces;

(c) the Ministry of Defence;

(d) the Ministry of Defence Police;

[F125(dza) the Civil Nuclear Constabulary;]

[F126(da) the OFT;]

[F127(db) the Serious Organised Crime Agency;]

[F128(e) the Commissioners for Her Majesty's Revenue and Customs;]

(f) the British Transport Police.

(4) For the purposes of so much of this Part as has effect in relation to any other public authority by virtue of—

(a) the fact that it is a public authority for the time being specified in Schedule 1, or

(b) an order under subsection (1)(d) of section 41 designating that authority for the purposes of that section,

the authorities specified in subsection (3) of this section shall be treated as including that authority to the extent that the Secretary of State by order directs that the authority is a relevant public authority or, as the case may be, is a designated authority for all parts of the United Kingdom.

Textual Amendments

F125 S. 46(3)(dza) inserted (1.4.2005) by Energy Act 2004 (c. 20), ss. 69, 198(2), **Sch. 14 para. 8(1)**; S.I. 2005/877, **art. 2(1)**, Sch. 1

F126 S. 46(3)(da) inserted (20.6.2003) by 2002 c. 40, ss. 199(10), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

F127 S. 46(3)(db) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 144**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F128 S. 46(3)(e) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 17**; S.I. 2008/219, **art. 2(b)**

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Supplemental provision for Part II

47 Power to extend or modify authorisation provisions.

(1) The Secretary of State may by order do one or both of the following—

(a) apply this Part, with such modifications as he thinks fit, to any such surveillance that is neither directed nor intrusive as may be described in the order;

(b) provide for any description of directed surveillance to be treated for the purposes of this Part as intrusive surveillance.

(2) No order shall be made under this section unless a draft of it has been laid before Parliament and approved by a resolution of each House.

48 Interpretation of Part II.

(1) In this Part—

"covert human intelligence source" shall be construed in accordance with section 26(8);

"directed" and "intrusive", in relation to surveillance, shall be construed in accordance with section 26(2) to (6);

[[F129]"OFT" means the Office of Fair Trading;**]**

"private vehicle" means (subject to subsection (7)(a)) any vehicle which is used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it;

"residential premises" means (subject to subsection (7)(b)) so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation (including hotel or prison accommodation that is so occupied or used);

"senior authorising officer" means a person who by virtue of subsection (6) of section 32 is a senior authorising officer for the purposes of that section;

"surveillance" shall be construed in accordance with subsections (2) to (4);

"surveillance device" means any apparatus designed or adapted for use in surveillance.

(2) Subject to subsection (3), in this Part "surveillance" includes—

(a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;

(b) recording anything monitored, observed or listened to in the course of surveillance; and

(c) surveillance by or with the assistance of a surveillance device.

(3) References in this Part to surveillance do not include references to—

(a) any conduct of a covert human intelligence source for obtaining or recording (whether or not using a surveillance device) any information which is disclosed in the presence of the source;

(b) the use of a covert human intelligence source for so obtaining or recording information; or

(c) any such entry on or interference with property or with wireless telegraphy as would be unlawful unless authorised under—

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(i) section 5 of the [M54]Intelligence Services Act 1994 (warrants for the intelligence services); or

(ii) Part III of the [M55]Police Act 1997 (powers of the police and of **[**[F130]officers of Revenue and Customs).**]**

(4) References in this Part to surveillance include references to the interception of a communication in the course of its transmission by means of a postal service or telecommunication system if, and only if—

(a) the communication is one sent by or intended for a person who has consented to the interception of communications sent by or to him; and

(b) there is no interception warrant authorising the interception.

(5) References in this Part to an individual holding an office or position with a public authority include references to any member, official or employee of that authority.

(6) For the purposes of this Part the activities of a covert human intelligence source which are to be taken as activities for the benefit of a particular public authority include any conduct of his as such a source which is in response to inducements or requests made by or on behalf of that authority.

(7) In subsection (1)—

(a) the reference to a person having the right to use a vehicle does not, in relation to a motor vehicle, include a reference to a person whose right to use the vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey; and

(b) the reference to premises occupied or used by any person for residential purposes or otherwise as living accommodation does not include a reference to so much of any premises as constitutes any common area to which he has or is allowed access in connection with his use or occupation of any accommodation.

(8) In this section—

"premises" includes any vehicle or moveable structure and any other place whatever, whether or not occupied as land;

"vehicle" includes any vessel, aircraft or hovercraft.

Textual Amendments

F129 Definition in s. 48(1) inserted (20.6.2003) by 2002 c. 40, ss. 199(11), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

F130 Words in s. 48(3)(c)(ii) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 18**; S.I. 2008/219, **art. 2(b)**

Marginal Citations

M54 1994 c. 13.

M55 1997 c. 50.

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PART III

INVESTIGATION OF ELECTRONIC DATA PROTECTED BY ENCRYPTION ETC.

Power to require disclosure

49 Notices requiring disclosure.

(1) This section applies where any protected information—

(a) has come into the possession of any person by means of the exercise of a statutory power to seize, detain, inspect, search or otherwise to interfere with documents or other property, or is likely to do so;

(b) has come into the possession of any person by means of the exercise of any statutory power to intercept communications, or is likely to do so;

(c) has come into the possession of any person by means of the exercise of any power conferred by an authorisation under section 22(3) or under Part II, or as a result of the giving of a notice under section 22(4), or is likely to do so;

(d) has come into the possession of any person as a result of having been provided or disclosed in pursuance of any statutory duty (whether or not one arising as a result of a request for information), or is likely to do so; or

(e) has, by any other lawful means not involving the exercise of statutory powers, come into the possession of any of the intelligence services, the police **[**[F131], SOCA**][**[F132], SCDEA**]** or **[**[F133]Her Majesty's Revenue and Customs**]** , or is likely so to come into the possession of any of those services, the police **[**[F131], SOCA**][**[F132], SCDEA**]** or **[**[F133]Her Majesty's Revenue and Customs**]** .

(2) If any person with the appropriate permission under Schedule 2 believes, on reasonable grounds—

(a) that a key to the protected information is in the possession of any person,

(b) that the imposition of a disclosure requirement in respect of the protected information is—

(i) necessary on grounds falling within subsection (3), or

(ii) necessary for the purpose of securing the effective exercise or proper performance by any public authority of any statutory power or statutory duty,

(c) that the imposition of such a requirement is proportionate to what is sought to be achieved by its imposition, and

(d) that it is not reasonably practicable for the person with the appropriate permission to obtain possession of the protected information in an intelligible form without the giving of a notice under this section,

the person with that permission may, by notice to the person whom he believes to have possession of the key, impose a disclosure requirement in respect of the protected information.

(3) A disclosure requirement in respect of any protected information 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; or

(c) in the interests of the economic well-being of the United Kingdom.

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(4) A notice under this section imposing a disclosure requirement in respect of any protected information—

(a) must be given in writing or (if not in writing) must be given in a manner that produces a record of its having been given;

(b) must describe the protected information to which the notice relates;

(c) must specify the matters falling within subsection (2)(b)(i) or (ii) by reference to which the notice is given;

(d) must specify the office, rank or position held by the person giving it;

(e) must specify the office, rank or position of the person who for the purposes of Schedule 2 granted permission for the giving of the notice or (if the person giving the notice was entitled to give it without another person's permission) must set out the circumstances in which that entitlement arose;

(f) must specify the time by which the notice is to be complied with; and

(g) must set out the disclosure that is required by the notice and the form and manner in which it is to be made;

and the time specified for the purposes of paragraph (f) must allow a period for compliance which is reasonable in all the circumstances.

(5) Where it appears to a person with the appropriate permission—

(a) that more than one person is in possession of the key to any protected information,

(b) that any of those persons is in possession of that key in his capacity as an officer or employee of any body corporate, and

(c) that another of those persons is the body corporate itself or another officer or employee of the body corporate,

a notice under this section shall not be given, by reference to his possession of the key, to any officer or employee of the body corporate unless he is a senior officer of the body corporate or it appears to the person giving the notice that there is no senior officer of the body corporate and (in the case of an employee) no more senior employee of the body corporate to whom it is reasonably practicable to give the notice.

(6) Where it appears to a person with the appropriate permission—

(a)that more than one person is in possession of the key to any protected information,

(b) that any of those persons is in possession of that key in his capacity as an employee of a firm, and

(c) that another of those persons is the firm itself or a partner of the firm,

a notice under this section shall not be given, by reference to his possession of the key, to any employee of the firm unless it appears to the person giving the notice that there is neither a partner of the firm nor a more senior employee of the firm to whom it is reasonably practicable to give the notice.

(7) Subsections (5) and (6) shall not apply to the extent that there are special circumstances of the case that mean that the purposes for which the notice is given would be defeated, in whole or in part, if the notice were given to the person to whom it would otherwise be required to be given by those subsections.

(8) A notice under this section shall not require the making of any disclosure to any person other than—

(a) the person giving the notice; or

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(b) such other person as may be specified in or otherwise identified by, or in accordance with, the provisions of the notice.

(9) A notice under this section shall not require the disclosure of any key which—

(a) is intended to be used for the purpose only of generating electronic signatures; and

(b) has not in fact been used for any other purpose.

(10) In this section "senior officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(11) Schedule 2 (definition of the appropriate permission) shall have effect.

Textual Amendments

F131 Words in s. 49(1)(e) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 145**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F132 Words in s. 49(1)(e) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(8)**

F133 Words in s. 49(1)(e) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 19**; S.I. 2008/219, **art. 2(b)**

Modifications etc. (not altering text)

C43 S. 49(1)(e) restricted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 16, 17, 53(1), **Sch. 2 Pt. 1 para. 11(2)(c)**; S.I. 2005/1126, **art. 2(2)(d)**

50 Effect of notice imposing disclosure requirement.

(1) Subject to the following provisions of this section, the effect of a section 49 notice imposing a disclosure requirement in respect of any protected information on a person who is in possession at a relevant time of both the protected information and a means of obtaining access to the information and of disclosing it in an intelligible form is that he—

(a) shall be entitled to use any key in his possession to obtain access to the information or to put it into an intelligible form; and

(b) shall be required, in accordance with the notice imposing the requirement, to make a disclosure of the information in an intelligible form.

(2) A person subject to a requirement under subsection (1)(b) to make a disclosure of any information in an intelligible form shall be taken to have complied with that requirement if—

(a) he makes, instead, a disclosure of any key to the protected information that is in his possession; and

(b) that disclosure is made, in accordance with the notice imposing the requirement, to the person to whom, and by the time by which, he was required to provide the information in that form.

(3) Where, in a case in which a disclosure requirement in respect of any protected information is imposed on any person by a section 49 notice—

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(a) that person is not in possession of the information,

(b) that person is incapable, without the use of a key that is not in his possession, of obtaining access to the information and of disclosing it in an intelligible form, or

(c) the notice states, in pursuance of a direction under section 51, that it can be complied with only by the disclosure of a key to the information,

the effect of imposing that disclosure requirement on that person is that he shall be required, in accordance with the notice imposing the requirement, to make a disclosure of any key to the protected information that is in his possession at a relevant time.

(4) Subsections (5) to (7) apply where a person ("the person given notice")—

(a) is entitled or obliged to disclose a key to protected information for the purpose of complying with any disclosure requirement imposed by a section 49 notice; and

(b) is in possession of more than one key to that information.

(5) It shall not be necessary, for the purpose of complying with the requirement, for the person given notice to make a disclosure of any keys in addition to those the disclosure of which is, alone, sufficient to enable the person to whom they are disclosed to obtain access to the information and to put it into an intelligible form.

(6) Where—

(a) subsection (5) allows the person given notice to comply with a requirement without disclosing all of the keys in his possession, and

(b) there are different keys, or combinations of keys, in the possession of that person the disclosure of which would, under that subsection, constitute compliance,

the person given notice may select which of the keys, or combination of keys, to disclose for the purpose of complying with that requirement in accordance with that subsection.

(7) Subject to subsections (5) and (6), the person given notice shall not be taken to have complied with the disclosure requirement by the disclosure of a key unless he has disclosed every key to the protected information that is in his possession at a relevant time.

(8) Where, in a case in which a disclosure requirement in respect of any protected information is imposed on any person by a section 49 notice—

(a) that person has been in possession of the key to that information but is no longer in possession of it,

(b) if he had continued to have the key in his possession, he would have been required by virtue of the giving of the notice to disclose it, and

(c) he is in possession, at a relevant time, of information to which subsection (9) applies,

the effect of imposing that disclosure requirement on that person is that he shall be required, in accordance with the notice imposing the requirement, to disclose all such information to which subsection (9) applies as is in his possession and as he may be required, in accordance with that notice, to disclose by the person to whom he would have been required to disclose the key.

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(9) This subsection applies to any information that would facilitate the obtaining or discovery of the key or the putting of the protected information into an intelligible form.

(10) In this section "relevant time", in relation to a disclosure requirement imposed by a section 49 notice, means the time of the giving of the notice or any subsequent time before the time by which the requirement falls to be complied with.

51 Cases in which key required.

(1) A section 49 notice imposing a disclosure requirement in respect of any protected information shall not contain a statement for the purposes of section 50(3)(c) unless—

(a) the person who for the purposes of Schedule 2 granted the permission for the giving of the notice in relation to that information, or

(b) any person whose permission for the giving of a such a notice in relation to that information would constitute the appropriate permission under that Schedule,

has given a direction that the requirement can be complied with only by the disclosure of the key itself.

(2) A direction for the purposes of subsection (1) by **[**[F134]the police, SOCA, **[**[F135]SCDEA,**]][**[F136]Her Majesty's Revenue and Customs**]** or a member of Her Majesty's forces shall not be given—

(a) in the case of a direction by the police or by a member of Her Majesty's forces who is a member of a police force, except by or with the permission of a chief officer of police;

[[F137](aa) in the case of a direction by SOCA, except by or with the permission of the Director General of the Serious Organised Crime Agency;**]**

[[F138](ab) in the case of a direction by SCDEA, except by or with the permission of the Director General of the Scottish Crime and Drug Enforcement Agency;**]**

(b) in the case of a direction by **[**[F136]Her Majesty's Revenue and Customs**]** , except by or with the permission of **[**[F139]the Commissioners for Her Majesty's Revenue and Customs**]** ; or

(c) in the case of a direction by a member of Her Majesty's forces who is not a member of a police force, except by or with the permission of a person of or above the rank of brigadier or its equivalent.

(3) A permission given for the purposes of subsection (2) by a chief officer of police, **[**[F140]the Director General of the Serious Organised Crime Agency,**][**[F141]the Director General of the Scottish Crime and Drug Enforcement Agency,**][**[F139]the Commissioners for Her Majesty's Revenue and Customs**]** or a person of or above any such rank as is mentioned in paragraph (c) of that subsection must be given expressly in relation to the direction in question.

(4) A person shall not give a direction for the purposes of subsection (1) unless he believes—

(a) that there are special circumstances of the case which mean that the purposes for which it was believed necessary to impose the requirement in question would be defeated, in whole or in part, if the direction were not given; and

(b) that the giving of the direction is proportionate to what is sought to be achieved by prohibiting any compliance with the requirement in question otherwise than by the disclosure of the key itself.

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(5) The matters to be taken into account in considering whether the requirement of subsection (4)(b) is satisfied in the case of any direction shall include—

(a) the extent and nature of any protected information, in addition to the protected information in respect of which the disclosure requirement is imposed, to which the key is also a key; and

(b) any adverse effect that the giving of the direction might have on a business carried on by the person on whom the disclosure requirement is imposed.

(6) Where a direction for the purposes of subsection (1) is given by a chief officer of police, **[**[F142]by the Director General of the Serious Organised Crime Agency,**][**[F143]by the Director General of the Scottish Crime and Drug Enforcement Agency,**]** by **[**[F139]the Commissioners for Her Majesty's Revenue and Customs**]** or by a member of Her Majesty's forces, the person giving the direction shall give a notification that he has done so —

(a) in a case where the direction is given—

(i) by a member of Her Majesty's forces who is not a member of a police force, and

(ii) otherwise than in connection with activities of members of Her Majesty's forces in Northern Ireland,

to the Intelligences Services Commissioner; and

(b) in any other case, to the Chief Surveillance Commissioner.

(7) A notification under subsection (6)—

(a) must be given not more than seven days after the day of the giving of the direction to which it relates; and

(b) may be given either in writing or by being transmitted to the Commissioner in question by electronic means.

Textual Amendments

F134 Words in s. 51(2) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 146(2)(a)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F135 Words in s. 51(2) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(9)(a)(i)**

F136 Words in s. 51 substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 20(a)**; S.I. 2008/219, **art. 2(b)**

F137 S. 51(2)(aa) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 146(2)(b)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F138 S. 51(2)(ab) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(9)(a)(ii)**

F139 Words in s. 51 substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 20(b)**; S.I. 2008/219, **art. 2(b)**

F140 Words in s. 51(3) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 146(3)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F141 Words in s. 51(3) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(9)(b)**

F142 Words in s. 51(6) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 146(4)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

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F143 Words in s. 51(6) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(9)(c)**

Contributions to costs

52 Arrangements for payments for disclosure.

(1) It shall be the duty of the Secretary of State to ensure that such arrangements are in force as he thinks appropriate for requiring or authorising, in such cases as he thinks fit, the making to persons to whom section 49 notices are given of appropriate contributions towards the costs incurred by them in complying with such notices.

(2) For the purpose of complying with his duty under this section, the Secretary of State may make arrangements for payments to be made out of money provided by Parliament.

Offences

53 Failure to comply with a notice.

(1) A person to whom a section 49 notice has been given is guilty of an offence if he knowingly fails, in accordance with the notice, to make the disclosure required by virtue of the giving of the notice.

(2) In proceedings against any person for an offence under this section, if it is shown that that person was in possession of a key to any protected information at any time before the time of the giving of the section 49 notice, that person shall be taken for the purposes of those proceedings to have continued to be in possession of that key at all subsequent times, unless it is shown that the key was not in his possession after the giving of the notice and before the time by which he was required to disclose it.

(3) For the purposes of this section a person shall be taken to have shown that he was not in possession of a key to protected information at a particular time if—
   (a) sufficient evidence of that fact is adduced to raise an issue with respect to it; and
   (b) the contrary is not proved beyond a reasonable doubt.

(4) In proceedings against any person for an offence under this section it shall be a defence for that person to show—
   (a) that it was not reasonably practicable for him to make the disclosure required by virtue of the giving of the section 49 notice before the time by which he was required, in accordance with that notice, to make it; but
   (b) that he did make that disclosure as soon after that time as it was reasonably practicable for him to do so.

(5) A person guilty of an offence under this section shall be liable—
   (a) on conviction on indictment, to imprisonment for a term not exceeding **[**[F144]the appropriate maximum term**]** or to a fine, or to both;
   (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

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[[F145](5A) In subsection (5) 'the appropriate maximum term' means—

(a) in a national security case, five years; and

(b) in any other case, two years.

(5B) In subsection (5A) 'a national security case' means a case in which the grounds specified in the notice to which the offence relates as the grounds for imposing a disclosure requirement were or included a belief that the imposition of the requirement was necessary in the interests of national security.**]**

Textual Amendments

F144 Words in s. 53(5)(a) substituted (13.4.2006) by Terrorism Act 2006 (c. 11), **ss. 15(1)(a)**, 39(2) (with s. 15(3)); S.I. 2006/1013, **art. 2(2)(a)**

F145 S. 53(5A)(5B) inserted (13.4.2006) by Terrorism Act 2006 (c. 11), **ss. 15(2)**, 39(2) (with s. 15(3)); S.I. 2006/1013, **art. 2(2)(a)**

54 Tipping-off.

(1) This section applies where a section 49 notice contains a provision requiring—

(a) the person to whom the notice is given, and

(b) every other person who becomes aware of it or of its contents,

to keep secret the giving of the notice, its contents and the things done in pursuance of it.

(2) A requirement to keep anything secret shall not be included in a section 49 notice except where—

(a) it is included with the consent of the person who for the purposes of Schedule 2 granted the permission for the giving of the notice; or

(b) the person who gives the notice is himself a person whose permission for the giving of such a notice in relation to the information in question would have constituted appropriate permission under that Schedule.

(3) A section 49 notice shall not contain a requirement to keep anything secret except where the protected information to which it relates—

(a) has come into the possession of the police, **[**[F146]SOCA,**][**[F147]SCDEA,**][**[F148]Her Majesty's Revenue and Customs**]** or any of the intelligence services, or

(b) is likely to come into the possession of the police, **[**[F146]SOCA,**][**[F147]SCDEA,**][**[F148]Her Majesty's Revenue and Customs**]** or any of the intelligence services,

by means which it is reasonable, in order to maintain the effectiveness of any investigation or operation or of investigatory techniques generally, or in the interests of the safety or well-being of any person, to keep secret from a particular person.

(4) A person who makes a disclosure to any other person of anything that he is required by a section 49 notice to keep secret shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

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(5) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that—

(a) the disclosure was effected entirely by the operation of software designed to indicate when a key to protected information has ceased to be secure; and

(b) that person could not reasonably have been expected to take steps, after being given the notice or (as the case may be) becoming aware of it or of its contents, to prevent the disclosure.

(6) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that—

(a) the disclosure was made by or to a professional legal adviser in connection with the giving, by the adviser to any client of his, of advice about the effect of provisions of this Part; and

(b) the person to whom or, as the case may be, by whom it was made was the client or a representative of the client.

(7) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was made by a legal adviser—

(a) in contemplation of, or in connection with, any legal proceedings; and

(b) for the purposes of those proceedings.

(8) Neither subsection (6) nor subsection (7) applies in the case of a disclosure made with a view to furthering any criminal purpose.

(9) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure made to a relevant Commissioner or authorised—

(a) by such a Commissioner;

(b) by the terms of the notice;

(c) by or on behalf of the person who gave the notice; or

(d) by or on behalf of a person who—

(i) is in lawful possession of the protected information to which the notice relates; and

(ii) came into possession of that information as mentioned in section 49(1).

(10) In proceedings for an offence under this section against a person other than the person to whom the notice was given, it shall be a defence for the person against whom the proceedings are brought to show that he neither knew nor had reasonable grounds for suspecting that the notice contained a requirement to keep secret what was disclosed.

(11) In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner or any Surveillance Commissioner or Assistant Surveillance Commissioner.

Textual Amendments

F146 Words in s. 54(3) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 147**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

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F147 Words in s. 54(3) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(10)**

F148 Word in s. 54(3) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 21**; S.I. 2008/219, **art. 2(b)**

Modifications etc. (not altering text)

C44 S. 54 restricted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 16, 17, 53(1), **Sch. 2 Pt. 1 para. 11(2)(d)**; S.I. 2005/1126, **art. 2(2)(d)**

Safeguards

55 General duties of specified authorities.

(1) This section applies to—

(a) the Secretary of State and every other Minister of the Crown in charge of a government department;

(b) every chief officer of police;

[F149(ba) the Director General of the Serious Organised Crime Agency;]

[F150(bb) the Director General of the Scottish Crime and Drug Enforcement Agency;]

[F151(c) the Commissioners for Her Majesty's Revenue and Customs;]

(d) every person whose officers or employees include persons with duties that involve the giving of section 49 notices.

(2) It shall be the duty of each of the persons to whom this section applies to ensure that such arrangements are in force, in relation to persons under his control who by virtue of this Part obtain possession of keys to protected information, as he considers necessary for securing—

(a) that a key disclosed in pursuance of a section 49 notice is used for obtaining access to, or putting into an intelligible form, only protected information in relation to which power to give such a notice was exercised or could have been exercised if the key had not already been disclosed;

(b) that the uses to which a key so disclosed is put are reasonable having regard both to the uses to which the person using the key is entitled to put any protected information to which it relates and to the other circumstances of the case;

(c) that, having regard to those matters, the use and any retention of the key are proportionate to what is sought to be achieved by its use or retention;

(d) that the requirements of subsection (3) are satisfied in relation to any key disclosed in pursuance of a section 49 notice;

(e) that, for the purpose of ensuring that those requirements are satisfied, any key so disclosed is stored, for so long as it is retained, in a secure manner;

(f) that all records of a key so disclosed (if not destroyed earlier) are destroyed as soon as the key is no longer needed for the purpose of enabling protected information to be put into an intelligible form.

(3) The requirements of this subsection are satisfied in relation to any key disclosed in pursuance of a section 49 notice if—

(a) the number of persons to whom the key is disclosed or otherwise made available, and

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(b) the number of copies made of the key,

are each limited to the minimum that is necessary for the purpose of enabling protected information to be put into an intelligible form.

[[F152](3B) Paragraph 6(2) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) does not apply in relation to the duties of the Director General of the Scottish Crime and Drug Enforcement Agency under this section.**]**

[[F153](3A) Paragraph 11 of Schedule 1 to the Serious Organised Crime and Police Act 2005 does not apply in relation to the duties of the Director General of the Serious Organised Crime Agency under this section.**]**

(4) Subject to subsection (5), where any relevant person incurs any loss or damage in consequence of—

(a) any breach by a person to whom this section applies of the duty imposed on him by subsection (2), or

(b) any contravention by any person whatever of arrangements made in pursuance of that subsection in relation to persons under the control of a person to whom this section applies,

the breach or contravention shall be actionable against the person to whom this section applies at the suit or instance of the relevant person.

(5) A person is a relevant person for the purposes of subsection (4) if he is—

(a) a person who has made a disclosure in pursuance of a section 49 notice; or

(b) a person whose protected information or key has been disclosed in pursuance of such a notice;

and loss or damage shall be taken into account for the purposes of that subsection to the extent only that it relates to the disclosure of particular protected information or a particular key which, in the case of a person falling with paragraph (b), must be his information or key.

(6) For the purposes of subsection (5)—

(a) information belongs to a person if he has any right that would be infringed by an unauthorised disclosure of the information; and

(b) a key belongs to a person if it is a key to information that belongs to him or he has any right that would be infringed by an unauthorised disclosure of the key.

(7) In any proceedings brought by virtue of subsection (4), it shall be the duty of the court to have regard to any opinion with respect to the matters to which the proceedings relate that is or has been given by a relevant Commissioner.

(8) In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.

Textual Amendments

F149 S. 55(1)(ba) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 148(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F150 S. 55(1)(bb) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(11)(a)**

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F151 S. 55(1)(c) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 22**; S.I. 2008/219, **art. 2(b)**

F152 S. 55(3B) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(11)(b)**

F153 S. 55(3A) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 148(3)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

Interpretation of Part III

56 Interpretation of Part III.

(1) In this Part—

"chief officer of police" means any of the following—

(a) the chief constable of a police force maintained under or by virtue of section 2 of the [M56]Police Act 1996 or section 1 of the [M57]Police (Scotland) Act 1967;

(b) the Commissioner of Police of the Metropolis;

(c) the Commissioner of Police for the City of London;

(d) the Chief Constable of the Royal Ulster Constabulary;

(e) the Chief Constable of the Ministry of Defence Police;

(f) the Provost Marshal of the **[**[F154]Royal Navy Police**]** ;

(g) the Provost Marshal of the Royal Military Police;

(h) the Provost Marshal of the Royal Air Force Police;

(i) the Chief Constable of the British Transport Police;

(j) [F155] . . . . . .

(k) [F155] . . . . . .

[F156] . . . . . .

"electronic signature" means anything in electronic form which—

(a) is incorporated into, or otherwise logically associated with, any electronic communication or other electronic data;

(b) is generated by the signatory or other source of the communication or data; and

(c) is used for the purpose of facilitating, by means of a link between the signatory or other source and the communication or data, the establishment of the authenticity of the communication or data, the establishment of its integrity, or both;

"key", in relation to any electronic data, means any key, code, password, algorithm or other data the use of which (with or without other keys)—

(a) allows access to the electronic data, or

(b) facilitates the putting of the data into an intelligible form;

"the police" means—

(a) any constable **[**[F157](except a constable who is a member of the staff of the Serious Organised Crime Agency **[**[F158]or a constable who is a member of the Scottish Crime and Drug Enforcement Agency**]**)**]** ;

(b) the Commissioner of Police of the Metropolis or any Assistant Commissioner of Police of the Metropolis; or

(c) the Commissioner of Police for the City of London;

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"protected information" means any electronic data which, without the key to the data—

(a) cannot, or cannot readily, be accessed, or

(b) cannot, or cannot readily, be put into an intelligible form;

[[F159]"SCDEA" means the Scottish Crime and Drug Enforcement Agency;**]**

"section 49 notice" means a notice under section 49;

[[F160]"SOCA" means the Serious Organised Crime Agency or any member of the staff of the Serious Organised Crime Agency;**]**

"warrant" includes any authorisation, notice or other instrument (however described) conferring a power of the same description as may, in other cases, be conferred by a warrant.

(2) References in this Part to a person's having information (including a key to protected information) in his possession include references—

(a) to its being in the possession of a person who is under his control so far as that information is concerned;

(b) to his having an immediate right of access to it, or an immediate right to have it transmitted or otherwise supplied to him; and

(c) to its being, or being contained in, anything which he or a person under his control is entitled, in exercise of any statutory power and without otherwise taking possession of it, to detain, inspect or search.

(3) References in this Part to something's being intelligible or being put into an intelligible form include references to its being in the condition in which it was before an encryption or similar process was applied to it or, as the case may be, to its being restored to that condition.

(4) In this section—

(a) references to the authenticity of any communication or data are references to any one or more of the following—

(i) whether the communication or data comes from a particular person or other source;

(ii) whether it is accurately timed and dated;

(iii) whether it is intended to have legal effect;

and

(b) references to the integrity of any communication or data are references to whether there has been any tampering with or other modification of the communication or data.

Textual Amendments

F154 S. 56(1): words in the definition of "chief officer of police" substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 174**; S.I. 2007/1442, **art. 2(1)**

F155 S. 56(1): paras (j) and (k) in the definition of "chief officer of police" repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174, 178, Sch. 4 para. 146(a), **Sch. 17**; S.I. 2006/378, **art. 4(1)**, Sch. paras. 10, 13(hh) (subject to art. 4(2)-(7))

F156 S. 56(1): definition of "the custom and excise" repealed (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 92, 94, Sch. 12 para. 23, **Sch. 14**; S.I. 2008/219, **art. 2(d)(ii)**

F157 S. 56(1): words in the definition of "the police" inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 149(b)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

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F158 S. 56(1): words in the definition of "the police" inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(12)(a)**

F159 S. 56(1): the definition of "SCDEA" inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(12)(b)**

F160 S. 56(1): definition of "SOCA" inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 149(c)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

Marginal Citations

M56 1996 c. 16.

M57 1967 c. 77.

PART IV

SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES

Modifications etc. (not altering text)

C45 Pt. IV (ss. 26-48): power to apply (with modifications) conferred (1.10.2002) by 2002 c. 30, **s. 19(2)(b)**; S.I. 2002/2306, **art. 2(b)(v)**

C46 Pt. 4 modified (1.4.2004) by The Independent Police Complaints Commission (Investigatory Powers) Order 2004 (S.I. 2004/815), **art. 3** (as amended (E.W.) (8.1.2018) by The Independent Office for Police Conduct (Transitional and Consequential) Regulations 2017 (S.I. 2017/1250), regs. 1, **10(6)** (with reg. 37))

Commissioners

57 Interception of Communications Commissioner.

(1) The Prime Minister shall appoint a Commissioner to be known as the Interception of Communications Commissioner.

(2) Subject to subsection (4), the Interception of Communications Commissioner shall keep under review—

(a) the exercise and performance by the Secretary of State of the powers and duties conferred or imposed on him by or under sections 1 to 11;

[[F161](aa) the exercise and performance by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of the powers and duties conferred or imposed on them by or under sections 5, 9 and 10;**]**

(b) the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under Chapter II of Part I;

(c) the exercise and performance by the Secretary of State in relation to information obtained under Part I of the powers and duties conferred or imposed on him by or under Part III; and

(d) the adequacy of the arrangements by virtue of which—

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(i) the duty which is imposed on the Secretary of State **[**[F162]or, the Scottish Ministers (by virtue of provision under section 63 of the Scotland Act 1998),**]**by section 15, and

(ii) so far as applicable to information obtained under Part I, the duties imposed by section 55,

are sought to be discharged.

(3) The Interception of Communications Commissioner shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—

(a) in connection with the investigation of any matter by the Tribunal; or

(b) otherwise for the purposes of the Tribunal's consideration or determination of any matter.

(4) It shall not be the function of the Interception of Communications Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.

(5) A person shall not be appointed under this section as the Interception of Communications Commissioner unless he holds or has held a high judicial office (within the meaning of the [M58]Appellate Jurisdiction Act 1876).

(6) The Interception of Communications Commissioner shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of money provided by Parliament such allowances as the Treasury may determine.

(7) The Secretary of State, after consultation with the Interception of Communications Commissioner, shall—

(a) make such technical facilities available to the Commissioner, and

(b) subject to the approval of the Treasury as to numbers, provide the Commissioner with such staff,

as are sufficient to secure that the Commissioner is able properly to carry out his functions.

(8) On the coming into force of this section the Commissioner holding office as the Commissioner under section 8 of the [M59]Interception of Communications Act 1985 shall take and hold office as the Interception of Communications Commissioner as if appointed under this Act—

(a) for the unexpired period of his term of office under that Act; and

(b) otherwise, on the terms of his appointment under that Act.

Textual Amendments

F161 S. 57(2)(aa) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 9(a)** (with art. 6)

F162 Words in s. 57(2)(d)(i) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 9(b)** (with art. 6)

Commencement Information

I3 S. 57 wholly in force at 1.10.2007; s. 57 not in force at Royal Assent see s. 83(2); s. 57 except s. 57(2)(b)(c)(d)(ii) in force at 2.10.2000 by S.I. 2000/2543, art. 3; s. 57(2)(b) in force at 5.1.2004 by S.I. 2003/3140, **art. 2(b)**; s. 57(2)(c)(d)(ii) in force at 1.10.2007 by S.I. 2007/2196, **art. 2**

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Marginal Citations

M58 1876 c. 59.

M59 1985 c. 56.

58 Co-operation with and reports by s. 57 Commissioner.

(1) It shall be the duty of—

(a) every person holding office under the Crown,

[F163(b) every member of the staff of the Serious Organised Crime Agency,]

[F164(ba) every member of the Scottish Crime and Drug Enforcement Agency,]

(d) every person employed by or for the purposes of a police force,

(e) every person required for the purposes of section 11 to provide assistance with giving effect to an interception warrant,

(f) every person on whom an obligation to take any steps has been imposed under section 12,

(g) every person by or to whom an authorisation under section 22(3) has been granted,

(h) every person to whom a notice under section 22(4) has been given,

(i) every person to whom a notice under section 49 has been given in relation to any information obtained under Part I, and

(j) every person who is or has been employed for the purposes of any business of a person falling within paragraph (e), (f), (h) or (i),

to disclose or provide to the Interception of Communications Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions under section 57.

(2) If it at any time appears to the Interception of Communications Commissioner—

(a) that there has been a contravention of the provisions of this Act in relation to any matter with which that Commissioner is concerned, and

(b) that the contravention has not been the subject of a report made to the Prime Minister by the Tribunal,

he shall make a report to the Prime Minister with respect to that contravention.

(3) If it at any time appears to the Interception of Communications Commissioner that any arrangements by reference to which the duties imposed by sections 15 and 55 have sought to be discharged have proved inadequate in relation to any matter with which the Commissioner is concerned, he shall make a report to the Prime Minister with respect to those arrangements.

(4) As soon as practicable after the end of each calendar year, the Interception of Communications Commissioner shall make a report to the Prime Minister with respect to the carrying out of that Commissioner's functions.

(5) The Interception of Communications Commissioner may also, at any time, make any such other report to the Prime Minister on any matter relating to the carrying out of the Commissioner's functions as the Commissioner thinks fit.

[F165(5A) The Interception of Communications Commissioner may also, at any time, make any such other report to the First Minister on any matter relating to the carrying out of the Commissioner's functions so far as they relate to the exercise by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of

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their powers under sections 5, 9(1)(b) and (3), 10(1)(a) and (2) and 15(1) of this Act, as the Commissioner thinks fit.**]**

(6) The Prime Minister shall lay before each House of Parliament a copy of every annual report made by the Interception of Communications Commissioner under subsection (4), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7).

[[F166](6A) The Prime Minister shall send a copy of every annual report made by the Interception of Communications Commissioner under subsection (4) which he lays in terms of subsection (6), together with a copy of the statement referred to in subsection (6), to the First Minister who shall forthwith lay that copy report and statement before the Scottish Parliament.**]**

(7) If it appears to the Prime Minister, after consultation with the Interception of Communications Commissioner **[**[F167]and if it appears relevant to do so, with the First Minister**]**, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—

(a) national security,

(b) the prevention or detection of serious crime,

(c) the economic well-being of the United Kingdom, or

(d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,

the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.

Textual Amendments

F163 S. 58(1)(b) substituted (1.4.2006) for s. 58(1)(b)(c) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 150**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F164 S. 58(1)(ba) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(13)**

F165 S. 58(5A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 10(a)** (with art. 6)

F166 S. 58(6A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 10**)(b) (with art. 6)

F167 Words in s. 58(7) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 10(c)** (with art. 6)

Commencement Information

I4 S. 58 wholly in force at 1.10.2007; s. 58 not in force at Royal Assent see s. 83(2); s. 58 in force except s. 58(1)(g)(h)(i) and s. 58(1)(j) in respect of s. 58(1)(h)(i) at 2.10.2000 by S.I. 2000/2543, art. 3; s. 58(1)(g)(h)(j) in force at 5.1.2004 by S.I. 2003/3140, **art. 2**; s. 58(1)(i) in force at 1.10.2007 by S.I. 2007/2196, **art. 2(c)**

59 Intelligence Services Commissioner.

(1) The Prime Minister shall appoint a Commissioner to be known as the Intelligence Services Commissioner.

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(2) Subject to subsection (4), the Intelligence Services Commissioner shall keep under review, so far as they are not required to be kept under review by the Interception of Communications Commissioner—

(a) the exercise by the Secretary of State of his powers under sections 5 to 7of **[**[F168],or the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of their powers under section s 5 and 6(3) and (4) of**]**the [M60]Intelli gence Services Act 1994 (warrants for interference with wireless telegraphy, entry and interference with property etc.);

(b) the exercise and performance by the Secretary of State **[**[F169]or the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998),**]**, in connection with or in relation to—

(i) the activities of the intelligence services, and

(ii) the activities in places other than Northern Ireland of the officials of the Ministry of Defence and of members of Her Majesty's forces,

of the powers and duties conferred or imposed on him by Parts II and III of this Act **[**[F170]or on them by Part II of this Act**]**;

(c) the exercise and performance by members of the intelligence services of the powers and duties conferred or imposed on them by or under Parts II and III of this Act;

(d) the exercise and performance in places other than Northern Ireland, by officials of the Ministry of Defence and by members of Her Majesty's forces, of the powers and duties conferred or imposed on such officials or members of Her Majesty's forces by or under Parts II and III; and

(e) the adequacy of the arrangements by virtue of which the duty imposed by section 55 is sought to be discharged—

(i) in relation to the members of the intelligence services; and

(ii) in connection with any of their activities in places other than Northern Ireland, in relation to officials of the Ministry of Defence and members of Her Majesty's forces.

(3) The Intelligence Services Commissioner shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—

(a) in connection with the investigation of any matter by the Tribunal; or

(b) otherwise for the purposes of the Tribunal's consideration or determination of any matter.

(4) It shall not be the function of the Intelligence Services Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.

(5) A person shall not be appointed under this section as the Intelligence Services Commissioner unless he holds or has held a high judicial office (within the meaning of the [M61]Appellate Jurisdiction Act 1876).

(6) The Intelligence Services Commissioner shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of money provided by Parliament such allowances as the Treasury may determine.

(7) The Secretary of State shall, after consultation with the Intelligence Services Commissioner and subject to the approval of the Treasury as to numbers, provide him

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with such staff as the Secretary of State considers necessary for the carrying out of the Commissioner's functions.

(8) Section 4 of the [M62]Security Service Act 1989 and section 8 of the [M63]Intelligence Services Act 1994 (Commissioners for the purposes of those Acts) shall cease to have effect.

(9) On the coming into force of this section the Commissioner holding office as the Commissioner under section 8 of the [M64]Intelligence Services Act 1994 shall take and hold office as the Intelligence Services Commissioner as if appointed under this Act—
  (a) for the unexpired period of his term of office under that Act; and
  (b) otherwise, on the terms of his appointment under that Act.

(10) Subsection (7) of section 41 shall apply for the purposes of this section as it applies for the purposes of that section.

Textual Amendments

F168 Words in s. 59(2)(a) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 11(a)** (with art. 6)

F169 Words in s. 59(2)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 11(b)(i)** (with art. 6)

F170 Words in s. 59(2)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 11(b)(ii)** (with art. 6)

Commencement Information

I5 S. 59 partly in force; s. 59 not in force at royal Assent see s. 83(2); s.59(1)(2)(a)(3)-(10) in force at 2.10.2000 and the rest of s. 59(2) in force at 2.10.2000 for certain purposes by S.I. 2000/2543, art. 3; s. 59(2)(b) in force in so far as not already in force by S.I. 2007/2196, **art. 2(d)**

Marginal Citations

M60 1994 c. 13.
M61 1876 c. 59.
M62 1989 c. 5.
M63 1994 c. 13.
M64 1994 c. 13.

60 Co-operation with and reports by s. 59 Commissioner.

(1) It shall be the duty of—
  (a) every member of an intelligence service,
  (b) every official of the department of the Secretary of State **[**[F171]and every member of staff of the Scottish Administration (by virtue of provision under section 63 of the Scotland Act 1998)**]**, and
  (c) every member of Her Majesty's forces,

to disclose or provide to the Intelligence Services Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions under section 59.

(2) As soon as practicable after the end of each calendar year, the Intelligence Services Commissioner shall make a report to the Prime Minister with respect to the carrying out of that Commissioner's functions.

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(3) The Intelligence Services Commissioner may also, at any time, make any such other report to the Prime Minister on any matter relating to the carrying out of the Commissioner's functions as the Commissioner thinks fit.

[[F172](3A) The Intelligence Services Commissioner may also, at any time, make any such other report to the First Minister on any matter relating to the carrying out of the Commissioner's functions so far as they relate to the exercise by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of their powers under sections 5 and 6(3) and (4) of the Intelligence Services Act 1994 [M65] or under Parts I and II of this Act, as the Commissioner thinks fit.**]**

(4) The Prime Minister shall lay before each House of Parliament a copy of every annual report made by the Intelligence Services Commissioner under subsection (2), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (5).

[[F173](4A) The Prime Minister shall send a copy of every annual report made by the Intelligence Services Commissioner under subsection (2) which he lays in terms of subsection (4), together with a copy of the statement referred to in subsection (4), to the First Minister who shall forthwith lay that copy report and statement before the Scottish Parliament.**]**

(5) If it appears to the Prime Minister, after consultation with the Intelligence Services Commissioner **[**[F174]and, if it appears relevant to do so, with the First Minister**]**, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—

(a) national security,

(b) the prevention or detection of serious crime,

(c) the economic well-being of the United Kingdom, or

(d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,

the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.

(6) Subsection (7) of section 41 shall apply for the purposes of this section as it applies for the purposes of that section.

Textual Amendments

F171 Words in s. 60(1)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 12(a)** (with art. 6)

F172 S. 60(3A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 12(b)** (with art. 6)

F173 S. 60(4A) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 12(c)** (with art. 6)

F174 Words in s. 60(5) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 12(d)** (with art. 6)

Marginal Citations

M65 1994 c.13.

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61 Investigatory Powers Commissioner for Northern Ireland.

(1) The Prime Minister, after consultation with the First Minister and deputy First Minister in Northern Ireland, shall appoint a Commissioner to be known as the Investigatory Powers Commissioner for Northern Ireland.

(2) The Investigatory Powers Commissioner for Northern Ireland shall keep under review the exercise and performance in Northern Ireland, by the persons on whom they are conferred or imposed, of any powers or duties under Part II which are conferred or imposed by virtue of an order under section 30 made by the Office of the First Minister and deputy First Minister in Northern Ireland.

(3) The Investigatory Powers Commissioner for Northern Ireland shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—

(a) in connection with the investigation of any matter by the Tribunal; or

(b) otherwise for the purposes of the Tribunal's consideration or determination of any matter.

(4) It shall be the duty of—

(a) every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Investigatory Powers Commissioner for Northern Ireland,

(b) every person who has engaged in conduct with the authority of such an authorisation,

(c) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a), and

(d) every person who holds or has held any office, rank or position with any public authority for whose benefit (within the meaning of Part II) activities which are or may be subject to any such review have been or may be carried out,

to disclose or provide to that Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.

(5) As soon as practicable after the end of each calendar year, the Investigatory Powers Commissioner for Northern Ireland shall make a report to the First Minister and deputy First Minister in Northern Ireland with respect to the carrying out of that Commissioner's functions.

(6) The First Minister and deputy First Minister in Northern Ireland shall lay before the Northern Ireland Assembly a copy of every annual report made by the Investigatory Powers Commissioner for Northern Ireland under subsection (5), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7).

(7) If it appears to the First Minister and deputy First Minister in Northern Ireland, after consultation with the Investigatory Powers Commissioner for Northern Ireland, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—

(a) the prevention or detection of serious crime, or

(b) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,

they may exclude that matter from the copy of the report as laid before the Northern Ireland Assembly.

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(8) A person shall not be appointed under this section as the Investigatory Powers Commissioner for Northern Ireland unless he holds or has held office in Northern Ireland—

(a) in any capacity in which he is or was the holder of a high judicial office (within the meaning of the [M66]Appellate Jurisdiction Act 1876); or

(b) as a county court judge.

(9) The Investigatory Powers Commissioner for Northern Ireland shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of the Consolidated Fund of Northern Ireland such allowances as the Department of Finance and Personnel may determine.

(10) The First Minister and deputy First Minister in Northern Ireland shall, after consultation with the Investigatory Powers Commissioner for Northern Ireland, provide him with such staff as they consider necessary for the carrying out of his functions.

Marginal Citations

M66 1876 c. 59.

62 Additional functions of Chief Surveillance Commissioner.

(1) The Chief Surveillance Commissioner shall (in addition to his functions under the [M67]Police Act 1997) keep under review, so far as they are not required to be kept under review by the Interception of Communications Commissioner, the Intelligence Services Commissioner or the Investigatory Powers Commissioner for Northern Ireland—

(a) the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under Part II;

(b) the exercise and performance, by any person other than a judicial authority, of the powers and duties conferred or imposed, otherwise than with the permission of such an authority, by or under Part III; and

(c) the adequacy of the arrangements by virtue of which the duties imposed by section 55 are sought to be discharged in relation to persons whose conduct is subject to review under paragraph (b).

(2) It shall not by virtue of this section be the function of the Chief Surveillance Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.

(3) In this section "judicial authority" means—

(a) any judge of the High Court or of the Crown Court or any Circuit Judge;

(b) any judge of the High Court of Justiciary or any sheriff;

(c) any justice of the peace;

(d) any county court judge or resident magistrate in Northern Ireland;

(e) any person holding any such judicial office as entitles him to exercise the jurisdiction of a judge of the Crown Court or of a justice of the peace.

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Commencement Information

I6 S. 62 wholly in force at 1.10.2007; s. 62 not in force at Royal Assent see s. 82(2); s. 62(1)(a)(2)(3) in force at 25.9.2000 by S.I. 2000/2543, art. 2; s. 62(1)(b)(c) in force at 1.10.2007 by S.I. 2007/2196, **art. 2(e)**

Marginal Citations

M67 1997 c. 50.

63 Assistant Surveillance Commissioners.

(1) The Prime Minister may, after consultation with the Chief Surveillance Commissioner as to numbers, appoint as Assistant Surveillance Commissioners such number of persons as the Prime Minister considers necessary (in addition to the ordinary Surveillance Commissioners) for the purpose of providing the Chief Surveillance Commissioner with assistance under this section.

(2) A person shall not be appointed as an Assistant Surveillance Commissioner unless he holds or has held office as—

(a) a judge of the Crown Court or a Circuit judge;

(b) a sheriff in Scotland; or

(c) a county court judge in Northern Ireland.

(3) The Chief Surveillance Commissioner may—

(a) require any ordinary Surveillance Commissioner or any Assistant Surveillance Commissioner to provide him with assistance in carrying out his functions under section 62(1); or

(b) require any Assistant Surveillance Commissioner to provide him with assistance in carrying out his equivalent functions under any Act of the Scottish Parliament in relation to any provisions of such an Act that are equivalent to those of Part II of this Act.

(4) The assistance that may be provided under this section includes—

(a) the conduct on behalf of the Chief Surveillance Commissioner of the review of any matter; and

(b) the making of a report to the Chief Surveillance Commissioner about the matter reviewed.

(5) Subsections (3) to (8) of section 91 of the [M68]Police Act 1997 (Commissioners) apply in relation to a person appointed under this section as they apply in relation to a person appointed under that section.

Marginal Citations

M68 1997 c. 50.

64 Delegation of Commissioners' functions.

(1) Anything authorised or required by or under any enactment or any provision of an Act of the Scottish Parliament to be done by a relevant Commissioner may be done by any

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member of the staff of that Commissioner who is authorised for the purpose (whether generally or specifically) by that Commissioner.

(2) In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.

The Tribunal

65 The Tribunal.

(1) There shall, for the purpose of exercising the jurisdiction conferred on them by this section, be a tribunal consisting of such number of members as Her Majesty may by Letters Patent appoint.

(2) The jurisdiction of the Tribunal shall be—
- (a) to be the only appropriate tribunal for the purposes of section 7 of the [M69]Human Rights Act 1998 in relation to any proceedings under subsection (1)(a) of that section (proceedings for actions incompatible with Convention rights) which fall within subsection (3) of this section;
- (b) to consider and determine any complaints made to them which, in accordance with subsection (4) , are complaints for which the Tribunal is the appropriate forum;
- (c) to consider and determine any reference to them by any person that he has suffered detriment as a consequence of any prohibition or restriction, by virtue of section 17, on his relying in, or for the purposes of, any civil proceedings on any matter; and
- (d) to hear and determine any other such proceedings falling within subsection (3) as may be allocated to them in accordance with provision made by the Secretary of State by order.

(3) Proceedings fall within this subsection if—
- (a) they are proceedings against any of the intelligence services;
- (b) they are proceedings against any other person in respect of any conduct, proposed conduct, by or on behalf of any of those services;
- (c) they are proceedings brought by virtue of section 55(4); or
- (d) they are proceedings relating to the taking place in any challengeable circumstances of any conduct falling within subsection (5).

(4) The Tribunal is the appropriate forum for any complaint if it is a complaint by a person who is aggrieved by any conduct falling within subsection (5) which he believes—
- (a) to have taken place in relation to him, to any of his property, to any communications sent by or to him, or intended for him, or to his use of any postal service, telecommunications service or telecommunication system; and
- (b) to have taken place in challengeable circumstances or to have been carried out by or on behalf of any of the intelligence services.

(5) Subject to subsection (6), conduct falls within this subsection if (whenever it occurred) it is—
- (a) conduct by or on behalf of any of the intelligence services;

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(b) conduct for or in connection with the interception of communications in the course of their transmission by means of a postal service or telecommunication system;

(c) conduct to which Chapter II of Part I applies;

[[F175](ca) the carrying out of surveillance by a foreign police or customs officer (within the meaning of section 76A);**]**

(d) **[**[F176]other**]** conduct to which Part II applies;

(e) the giving of a notice under section 49 or any disclosure or use of a key to protected information;

(f) any entry on or interference with property or any interference with wireless telegraphy.

(6) For the purposes only of subsection (3), nothing mentioned in paragraph (d) or (f) of subsection (5) shall be treated as falling within that subsection unless it is conduct by or on behalf of a person holding any office, rank or position with—

(a) any of the intelligence services;

(b) any of Her Majesty's forces;

(c) any police force;

[[F177](d) the Serious Organised Crime Agency; or**]**

[[F178](da) the Scottish Crime and Drug Enforcement Agency;**]**

[[F179](f) the Commissioners for Her Majesty's Revenue and Customs;**]**

and section 48(5) applies for the purposes of this subsection as it applies for the purposes of Part II.

(7) For the purposes of this section conduct takes place in challengeable circumstances if—

(a) it takes place with the authority, or purported authority, of anything falling within subsection (8); or

(b) the circumstances are such that (whether or not there is such authority) it would not have been appropriate for the conduct to take place without it, or at least without proper consideration having been given to whether such authority should be sought;

but conduct does not take place in challengeable circumstances to the extent that it is authorised by, or takes place with the permission of, a judicial authority.

[[F180](7A) For the purposes of this section conduct also takes place in challengeable circumstances if it takes place, or purports to take place, under section 76A.**]**

(8) The following fall within this subsection—

(a) an interception warrant or a warrant under the [M70]Interception of Communications Act 1985;

(b) an authorisation or notice under Chapter II of Part I of this Act;

(c) an authorisation under Part II of this Act or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by that Part;

(d) a permission for the purposes of Schedule 2 to this Act;

(e) a notice under section 49 of this Act; or

(f) an authorisation under section 93 of the [M71]Police Act 1997.

(9) Schedule 3 (which makes further provision in relation to the Tribunal) shall have effect.

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(10) In this section—

(a) references to a key and to protected information shall be construed in accordance with section 56;

(b) references to the disclosure or use of a key to protected information taking place in relation to a person are references to such a disclosure or use taking place in a case in which that person has had possession of the key or of the protected information; and

(c) references to the disclosure of a key to protected information include references to the making of any disclosure in an intelligible form (within the meaning of section 56) of protected information by a person who is or has been in possession of the key to that information;

and the reference in paragraph (b) to a person's having possession of a key or of protected information shall be construed in accordance with section 56.

(11) In this section "judicial authority" means—

(a) any judge of the High Court or of the Crown Court or any Circuit Judge;

(b) any judge of the High Court of Justiciary or any sheriff;

(c) any justice of the peace;

(d) any county court judge or resident magistrate in Northern Ireland;

(e) any person holding any such judicial office as entitles him to exercise the jurisdiction of a judge of the Crown Court or of a justice of the peace.

Textual Amendments

F175 S. 65(5)(ca) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(a)(i)**; S.I. 2004/786, **art. 3(1)(2)**

F176 Word in s. 65(5)(d) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(a)(ii)**; S.I. 2004/786, **art. 3(1)(2)**

F177 S. 65(6)(d) substituted (1.4.2006) for s. 65(6)(d)(e) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 151**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F178 S. 65(6)(da) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(14)**

F179 S. 65(6)(f) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 24**; S.I. 2008/219, **art. 2(b)**

F180 S. 65(7A) inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 90, 94, **Sch. 5 para. 79(b)**; S.I. 2004/786, **art. 3(1)(2)**

Modifications etc. (not altering text)

C47 S. 65 extended (S.) (29.9.2000) by 2000 asp 11, **ss. 23(1)(2)**, 32(2) (with s. 30); S.I. 2000/341, **art. 2**

Commencement Information

I7 S. 65 partly in force; s. 65 not in force at Royal Assent see s. 83(2); s. 65(1)(2)(a)(b)(3)(a)(b)(d)(4)(5)(a)(b)(d)(f)(6)(7)(8)(a)(c)(f)(9)(11) in force at 2.10.2000 by S.I. 2000/2543, art. 3 (subject to transitional provisions in art. 6); s. 65(5)(c)(8)(b) in force at 5.1.2004 by S.I. 2003/3140, **art. 2**; s. 65(3)(c)(5)(e)(8)(d)(e)(10) in force at 1.10.2007 by S.I. 2007/2196, **art. 2(f)**

Marginal Citations

M69 1998 c.42

M70 1985 c. 56.

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M71 1997 c. 50.

PROSPECTIVE

66 Orders allocating proceedings to the Tribunal.

(1) An order under section 65(2)(d) allocating proceedings to the Tribunal—

(a) may provide for the Tribunal to exercise jurisdiction in relation to that matter to the exclusion of the jurisdiction of any court or tribunal; but

(b) if it does so provide, must contain provision conferring a power on the Tribunal, in the circumstances provided for in the order, to remit the proceedings to the court or tribunal which would have had jurisdiction apart from the order.

(2) In making any provision by an order under section 65(2)(d) the Secretary of State shall have regard, in particular, to—

(a) the need to secure that proceedings allocated to the Tribunal are properly heard and considered; and

(b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services.

(3) The Secretary of State shall not make an order under section 65(2)(d) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

67 Exercise of the Tribunal's jurisdiction.

(1) Subject to subsections (4) and (5), it shall be the duty of the Tribunal—

(a) to hear and determine any proceedings brought before them by virtue of section 65(2)(a) or (d); and

(b) to consider and determine any complaint or reference made to them by virtue of section 65(2)(b) or (c).

(2) Where the Tribunal hear any proceedings by virtue of section 65(2)(a), they shall apply the same principles for making their determination in those proceedings as would be applied by a court on an application for judicial review.

(3) Where the Tribunal consider a complaint made to them by virtue of section 65(2)(b), it shall be the duty of the Tribunal—

(a) to investigate whether the persons against whom any allegations are made in the complaint have engaged in relation to—

(i) the complainant,

(ii) any of his property,

(iii) any communications sent by or to him, or intended for him, or

(iv) his use of any postal service, telecommunications service or telecommunication system,

in any conduct falling within section 65(5);

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(b) to investigate the authority (if any) for any conduct falling within section 65(5) which they find has been so engaged in; and

(c) in relation to the Tribunal's findings from their investigations, to determine the complaint by applying the same principles as would be applied by a court on an application for judicial review.

(4) The Tribunal shall not be under any duty to hear, consider or determine any proceedings, complaint or reference if it appears to them that the bringing of the proceedings or the making of the complaint or reference is frivolous or vexatious.

(5) Except where the Tribunal, having regard to all the circumstances, are satisfied that it is equitable to do so, they shall not consider or determine any complaint made by virtue of section 65(2)(b) if it is made more than one year after the taking place of the conduct to which it relates.

(6) Subject to any provision made by rules under section 69, where any proceedings have been brought before the Tribunal or any reference made to the Tribunal, they shall have power to make such interim orders, pending their final determination, as they think fit.

(7) Subject to any provision made by rules under section 69, the Tribunal on determining any proceedings, complaint or reference shall have power to make any such award of compensation or other order as they think fit; and, without prejudice to the power to make rules under section 69(2)(h), the other orders that may be made by the Tribunal include—

(a) an order quashing or cancelling any warrant or authorisation; and

(b) an order requiring the destruction of any records of information which—

(i) has been obtained in exercise of any power conferred by a warrant or authorisation; or

(ii) is held by any public authority in relation to any person.

(8) Except to such extent as the Secretary of State may by order otherwise provide, determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether they have jurisdiction) shall not be subject to appeal or be liable to be questioned in any court.

(9) It shall be the duty of the Secretary of State to secure that there is at all times an order under subsection (8) in force allowing for an appeal to a court against any exercise by the Tribunal of their jurisdiction under section 65(2)(c) or (d).

(10) The provision that may be contained in an order under subsection (8) may include—

(a) provision for the establishment and membership of a tribunal or body to hear appeals;

(b) the appointment of persons to that tribunal or body and provision about the remuneration and allowances to be payable to such persons and the expenses of the tribunal;

(c) the conferring of jurisdiction to hear appeals on any existing court or tribunal; and

(d) any such provision in relation to an appeal under the order as corresponds to provision that may be made by rules under section 69 in relation to proceedings before the Tribunal, or to complaints or references made to the Tribunal.

(11) The Secretary of State shall not make an order under subsection (8) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

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(12) The Secretary of State shall consult the Scottish Ministers before making any order under subsection (8); and any such order shall be laid before the Scottish Parliament.

Modifications etc. (not altering text)

C48 S. 67(7) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

C49 S. 67(8) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

C50 S. 67(10) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

C51 S. 67(11) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

C52 S. 67(12) applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(i) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

Commencement Information

I8 S. 67 partly in force; s. 67 not in force at Royal Assent see s. 83(1); s. 67(2)-(8)(10)-(12) in force at 2.10.2000 and s. 67(1) in force 2.10.2000 for certain purposes by S.I.2543, art. 3

68 Tribunal procedure.

(1) Subject to any rules made under section 69, the Tribunal shall be entitled to determine their own procedure in relation to any proceedings, complaint or reference brought before or made to them.

(2) The Tribunal shall have power—

(a) in connection with the investigation of any matter, or

(b) otherwise for the purposes of the Tribunal's consideration or determination of any matter,

to require a relevant Commissioner appearing to the Tribunal to have functions in relation to the matter in question to provide the Tribunal with all such assistance (including that Commissioner's opinion as to any issue falling to be determined by the Tribunal) as the Tribunal think fit.

(3) Where the Tribunal hear or consider any proceedings, complaint or reference relating to any matter, they shall secure that every relevant Commissioner appearing to them to have functions in relation to that matter—

(a) is aware that the matter is the subject of proceedings, a complaint or a reference brought before or made to the Tribunal; and

(b) is kept informed of any determination, award, order or other decision made by the Tribunal with respect to that matter.

(4) Where the Tribunal determine any proceedings, complaint or reference brought before or made to them, they shall give notice to the complainant which (subject to any rules made by virtue of section 69(2)(i)) shall be confined, as the case may be, to either—

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(a) a statement that they have made a determination in his favour; or
(b) a statement that no determination has been made in his favour.

(5) Where—
(a) the Tribunal make a determination in favour of any person by whom any proceedings have been brought before the Tribunal or by whom any complaint or reference has been made to the Tribunal, and
(b) the determination relates to any act or omission by or on behalf of the Secretary of State or to conduct for which any warrant, authorisation or permission was issued, granted or given by the Secretary of State,

they shall make a report of their findings to the Prime Minister.

(6) It shall be the duty of the persons specified in subsection (7) to disclose or provide to the Tribunal all such documents and information as the Tribunal may require for the purpose of enabling them—
(a) to exercise the jurisdiction conferred on them by or under section 65; or
(b) otherwise to exercise or perform any power or duty conferred or imposed on them by or under this Act.

(7) Those persons are—
(a) every person holding office under the Crown;
[[F181](b) every member of the staff of the Serious Organised Crime Agency;**]**
[[F182](ba) every member of the Scottish Crime and Drug Enforcement Agency;**]**
(d) every person employed by or for the purposes of a police force;
(e) every person required for the purposes of section 11 to provide assistance with giving effect to an interception warrant;
(f) every person on whom an obligation to take any steps has been imposed under section 12;
(g) every person by or to whom an authorisation under section 22(3) has been granted;
(h) every person to whom a notice under section 22(4) has been given;
(i) every person by whom, or on whose application, there has been granted or given any authorisation under Part II of this Act or under Part III of the [M72]Police Act 1997;
(j) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (i);
(k) every person who has engaged in any conduct with the authority of an authorisation under section 22 or Part II of this Act or under Part III of the [M73]Police Act 1997;
(l) every person who holds or has held any office, rank or position with a public authority for whose benefit any such authorisation has been or may be given;
(m) every person to whom a notice under section 49 has been given; and
(n) every person who is or has been employed for the purposes of any business of a person falling within paragraph (e), (f), (h) or (m).

(8) In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.

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Textual Amendments

F181 S. 68(7)(b) substituted (1.4.2006) for s. 68(7)(b)(c) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 152**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F182 S. 68(7)(ba) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(15)**

Modifications etc. (not altering text)

C53 S. 68 applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(ii) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

Commencement Information

I9 S. 68 wholly in force at 1.10.2007; s. 68 not in force at Royal Assent see s. 83(2); s. 68 in force except s. 68(7)(g)(h)(m) and s. 68(7)(n) in respect of s. 68(7)(m) at 2.10.2000 by S.I. 2000/2543, art. 3; s. 68(7)(g)(h) in force at 5.1.2004 by S.I. 2003/3140, **art. 2**; s. 68(7)(m) in force and (n) in force for certain purposes at 1.10.2007 by S.I. 2007/2196, **art. 2(g)**

Marginal Citations

M72 1997 c. 50.

M73 1997 c. 50.

69 Tribunal rules.

(1) The Secretary of State may make rules regulating—

(a) the exercise by the Tribunal of the jurisdiction conferred on them by or under section 65; and

(b) any matters preliminary or incidental to, or arising out of, the hearing or consideration of any proceedings, complaint or reference brought before or made to the Tribunal.

(2) Without prejudice to the generality of subsection (1), rules under this section may—

(a) enable the jurisdiction of the Tribunal to be exercised at any place in the United Kingdom by any two or more members of the Tribunal designated for the purpose by the President of the Tribunal;

(b) enable different members of the Tribunal to carry out functions in relation to different complaints at the same time;

(c) prescribe the form and manner in which proceedings are to be brought before the Tribunal or a complaint or reference is to be made to the Tribunal;

(d) require persons bringing proceedings or making complaints or references to take such preliminary steps, and to make such disclosures, as may be specified in the rules for the purpose of facilitating a determination of whether—

(i) the bringing of the proceedings, or

(ii) the making of the complaint or reference,

is frivolous or vexatious;

(e) make provision about the determination of any question as to whether a person by whom—

(i) any proceedings have been brought before the Tribunal, or

(ii) any complaint or reference has been made to the Tribunal,

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is a person with a right to bring those proceedings or make that complaint or reference;

(f) prescribe the forms of hearing or consideration to be adopted by the Tribunal in relation to particular proceedings, complaints or references (including a form that requires any proceedings brought before the Tribunal to be disposed of as if they were a complaint or reference made to the Tribunal);

(g) prescribe the practice and procedure to be followed on, or in connection with, the hearing or consideration of any proceedings, complaint or reference (including, where applicable, the mode and burden of proof and the admissibility of evidence);

(h) prescribe orders that may be made by the Tribunal under section 67(6) or (7);

(i) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings, complaint or reference to be provided (in addition to any statement under section 68(4)) to the person who brought the proceedings or made the complaint or reference, or to the person representing his interests.

(3) Rules under this section in relation to the hearing or consideration of any matter by the Tribunal may provide—

(a) for a person who has brought any proceedings before or made any complaint or reference to the Tribunal to have the right to be legally represented;

(b) for the manner in which the interests of a person who has brought any proceedings before or made any complaint or reference to the Tribunal are otherwise to be represented;

(c) for the appointment in accordance with the rules, by such person as may be determined in accordance with the rules, of a person to represent those interests in the case of any proceedings, complaint or reference.

(4) The power to make rules under this section includes power to make rules—

(a) enabling or requiring the Tribunal to hear or consider any proceedings, complaint or reference without the person who brought the proceedings or made the complaint or reference having been given full particulars of the reasons for any conduct which is the subject of the proceedings, complaint or reference;

(b) enabling or requiring the Tribunal to take any steps in exercise of their jurisdiction in the absence of any person (including the person bringing the proceedings or making the complaint or reference and any legal representative of his);

(c) enabling or requiring the Tribunal to give a summary of any evidence taken in his absence to the person by whom the proceedings were brought or, as the case may be, to the person who made the complaint or reference;

(d) enabling or requiring the Tribunal to exercise their jurisdiction, and to exercise and perform the powers and duties conferred or imposed on them (including, in particular, in relation to the giving of reasons), in such manner provided for in the rules as prevents or limits the disclosure of particular matters.

(5) Rules under this section may also include provision—

(a) enabling powers or duties of the Tribunal that relate to matters preliminary or incidental to the hearing or consideration of any proceedings, complaint or reference to be exercised or performed by a single member of the Tribunal; and

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(b) conferring on the Tribunal such ancillary powers as the Secretary of State thinks necessary for the purposes of, or in connection with, the exercise of the Tribunal's jurisdiction, or the exercise or performance of any power or duty conferred or imposed on them.

(6) In making rules under this section the Secretary of State shall have regard, in particular, to—

(a) the need to secure that matters which are the subject of proceedings, complaints or references brought before or made to the Tribunal are properly heard and considered; and

(b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services.

(7) Rules under this section may make provision by the application, with or without modification, of the provision from time to time contained in specified rules of court.

(8) Subject to subsection (9), no rules shall be made under this section unless a draft of them has first been laid before Parliament and approved by a resolution of each House.

(9) Subsection (8) does not apply in the case of the rules made on the first occasion on which the Secretary of State exercises his power to make rules under this section.

(10) The rules made on that occasion shall cease to have effect at the end of the period of forty days beginning with the day on which they were made unless, before the end of that period, they have been approved by a resolution of each House of Parliament.

(11) For the purposes of subsection (10)—

(a) the rules' ceasing to have effect shall be without prejudice to anything previously done or to the making of new rules; 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.

(12) The Secretary of State shall consult the Scottish Ministers before making any rules under this section; and any rules so made shall be laid before the Scottish Parliament.

Modifications etc. (not altering text)

C54 S. 69 applied (with modifications) by 1998 c. 47, s. 69B(2)(c)(iii) (as inserted (1.8.2007) by Justice and Security (Northern Ireland) Act 2007 (c. 6), **ss. 15**, 53 (with s. 20); S.I. 2007/2045, **art. 2(2)(3)(j)** (with art. 3))

70 Abolition of jurisdiction in relation to complaints.

(1) The provisions set out in subsection (2) (which provide for the investigation etc. of certain complaints) shall not apply in relation to any complaint made after the coming into force of this section.

(2) Those provisions are—

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(a) section 5 of, and Schedules 1 and 2 to, the [M74]Security Service Act 1989 (investigation of complaints about the Security Service made to the Tribunal established under that Act);

(b) section 9 of, and Schedules 1 and 2 to, the [M75]Intelligence Services Act 1994 (investigation of complaints about the Secret Intelligence Service or GCHQ made to the Tribunal established under that Act); and

(c) section 102 of, and Schedule 7 to, the [M76]Police Act 1997 (investigation of complaints made to the Surveillance Commissioners).

Marginal Citations

M74 1989 c. 5.
M75 1994 c. 13.
M76 1997 c. 50.

Codes of practice

71 Issue and revision of codes of practice.

(1) The Secretary of State shall issue one or more codes of practice relating to the exercise and performance of the powers and duties mentioned in subsection (2).

(2) Those powers and duties are those (excluding any power to make subordinate legislation) that are conferred or imposed otherwise than on the Surveillance Commissioners by or under—

(a) Parts I to III of this Act;

(b) section 5 of the [M77]Intelligence Services Act 1994 (warrants for interference with property or wireless telegraphy for the purposes of the intelligence services); and

(c) Part III of the [M78]Police Act 1997 (authorisation by the police or **[**[F183]Her Majesty's Revenue and Customs**]** of interference with property or wireless telegraphy).

(3) Before issuing a code of practice under subsection (1), the Secretary of State shall—

(a) prepare and publish a draft of that code; and

(b) consider any representations made to him about the draft;

and the Secretary of State may incorporate in the code finally issued any modifications made by him to the draft after its publication.

(4) The Secretary of State shall lay before both Houses of Parliament every draft code of practice prepared and published by him under this section.

(5) A code of practice issued by the Secretary of State under this section shall not be brought into force except in accordance with an order made by the Secretary of State.

(6) An order under subsection (5) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the bringing into force of the code brought into force by that order.

(7) The Secretary of State may from time to time—

(a) revise the whole or any part of a code issued under this section; and

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(b) issue the revised code.

(8) Subsections (3) to (6) shall apply (with appropriate modifications) in relation to the issue of any revised code under this section as they apply in relation to the first issue of such a code.

(9) The Secretary of State shall not make an order containing provision for any of the purposes of this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Textual Amendments

F183 Words in s. 71(2)(c) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 25**; S.I. 2008/219, **art. 2(b)**

Commencement Information

I10 S. 71 not in force at Royal Assent see s. 83(2); s. 71 in force for certain purposes at 25.9.2000 and 2.10.2000 by S.I. 2000/2543, arts. 2, 3; s. 71 in force for certain other purposes at 13.8.2001 by S.I. 2001/2727, art. 2; s. 71 in force for further certain purposes at 1.10.2007 by S.I. 2007/2196, **art. 2(h)**

Marginal Citations

M77 1994 c. 13.
M78 1997 c. 50.

72 Effect of codes of practice.

(1) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under section 71 shall, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under that section.

(2) A failure on the part of any person to comply with any provision of a code of practice for the time being in force under section 71 shall not of itself render him liable to any criminal or civil proceedings.

(3) A code of practice in force at any time under section 71 shall be admissible in evidence in any criminal or civil proceedings.

(4) If any provision of a code of practice issued or revised under section 71 appears to—
(a) the court or tribunal conducting any civil or criminal proceedings,
(b) the Tribunal,
(c) a relevant Commissioner carrying out any of his functions under this Act,
(d) a Surveillance Commissioner carrying out his functions under this Act or the [M79]Police Act 1997, or
(e) any Assistant Surveillance Commissioner carrying out any functions of his under section 63 of this Act,

to be relevant to any question arising in the proceedings, or in connection with the exercise of that jurisdiction or the carrying out of those functions, in relation to a time when it was in force, that provision of the code shall be taken into account in determining that question.

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(5) In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner or the Investigatory Powers Commissioner for Northern Ireland.

Commencement Information

I11 S. 72 not in force at Royal Assent see s. 83(2); s. 72 in force for certain purposes at 25.9.2000 and s. 72 in force at 2.10.2000 for certain other purposes by S.I. 2000/2543, arts. 2, 3; s. 72 in force for certain other purposes at 13.8.2001 by S.I. 2001/2727, art. 2; s. 72 in force for further certain purposes at 1.10.2007 by S.I. 2007/2196, **art. 2(h)**

Marginal Citations

M79 1997 c. 50.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

73 Conduct in relation to wireless telegraphy.

F184 . . . . . .

Textual Amendments

F184 S. 73 repealed (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 125, 126, **Sch. 9 Pt. 1** (with Sch. 8 Pt. 1)

74 Warrants under the Intelligence Services Act 1994.

(1) In subsection (2) of section 5 of the M80Intelligence 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 include whether what it is thought necessary to achieve by the conduct authorised by the warrant could reasonably be achieved by other means."

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(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;".

Marginal Citations

M80 1994 c. 13.

75 Authorisations under Part III of the Police Act 1997.

(1) Section 93 of the [M81]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

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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) [F185]. . . . . .

(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 [M82]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 [M83]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 [M84]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 [M85]Air Force Act 1955 for the time being applies by virtue of section 209 of that Act."

Textual Amendments

F185 S. 75(6)(b) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 174, 178, Sch. 4 para. 153, **Sch. 17**; S.I. 2006/378, **art. 4(1)**, Sch. paras. 10, 13(hh) (subject to art. 4(2)-(7))

Marginal Citations

M81 1997 c. 50.

M82 1987 c. 4.

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M83 1957 c. 53.
M84 1955 c. 18.
M85 1955 c. 19.

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,

(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.

[F186 76A Foreign surveillance operations E+W+N.I.

(1) This section applies where—

(a) a foreign police or customs officer is carrying out relevant surveillance outside the United Kingdom which is lawful under the law of the country or territory in which it is being carried out;

(b) circumstances arise by virtue of which the surveillance can for the time being be carried out only in the United Kingdom; and

(c) it is not reasonably practicable in those circumstances for a United Kingdom officer to carry out the surveillance in the United Kingdom in accordance with an authorisation under Part 2 or the Regulation of Investigatory Powers (Scotland) Act 2000.

(2) "Relevant surveillance" means surveillance which—

(a) is carried out in relation to a person who is suspected of having committed a relevant crime; and

(b) is, for the purposes of Part 2, directed surveillance or intrusive surveillance.

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(3) "Relevant crime" means crime which—

(a) falls within Article 40(7) of the Schengen Convention; or

(b) is crime for the purposes of any other international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State with the consent of the Scottish Ministers.

(4) Relevant surveillance carried out by the foreign police or customs officer in the United Kingdom during the permitted period is to be lawful for all purposes if—

(a) the condition mentioned in subsection (6) is satisfied;

(b) the officer carries out the surveillance only in places to which members of the public have or are permitted to have access, whether on payment or otherwise; and

(c) conditions specified in any order made by the Secretary of State with the consent of the Scottish Ministers are satisfied in relation to its carrying out;

but no surveillance is lawful by virtue of this subsection if the officer subsequently seeks to stop and question the person in the United Kingdom in relation to the relevant crime.

(5) The officer is not to be subject to any civil liability in respect of any conduct of his which is incidental to any surveillance that is lawful by virtue of subsection (4).

(6) The condition in this subsection is satisfied if, immediately after the officer enters the United Kingdom—

(a) he notifies a person designated by the Director General of the **[**[F187]Serious Organised Crime Agency**]** of that fact; and

(b) (if the officer has not done so before) he requests an application to be made for an authorisation under Part 2, or the Regulation of Investigatory Powers (Scotland) Act 2000, for the carrying out of the surveillance.

(7) "The permitted period" means the period of five hours beginning with the time when the officer enters the United Kingdom.

(8) But a person designated by an order made by the Secretary of State may notify the officer that the surveillance is to cease being lawful by virtue of subsection (4) when he gives the notification.

(9) The Secretary of State is not to make an order under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(10) In this section references to a foreign police or customs officer are to a police or customs officer who, in relation to a country or territory other than the United Kingdom, is an officer for the purposes of—

(a) Article 40 of the Schengen Convention; or

(b) any other international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State with the consent of the Scottish Ministers.

(11) In this section—

"the Schengen Convention" means the Convention implementing the Schengen Agreement of 14th June 1985;

"United Kingdom officer" means—

(a) a member of a police force;

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(b) a member of the **[**[F188]staff of the Serious Organised Crime Agency**]** ;

(c) **[**[F189]a police member of the Scottish Crime and Drug Enforcement Agency appointed by virtue of paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);**]**

(d) **[**[F190]an officer of Revenue and Customs.**]]**

Extent Information

E1 This version extends to England, Wales and Northern Ireland only; a separate version has been created for Scotland only

Textual Amendments

F186 S. 76A inserted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), **ss. 83**, 94; S.I. 2004/786, **art. 3(1)(2)**

F187 Words in s. 76A(6)(a) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 154(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F188 S. 76A(11): words in the definition of "United Kingdom officer" substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 154(3)(a)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F189 S. 76A(11): words substituted (E.W.N.I.) (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(17)**

F190 Words in s. 76A(11) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 26**; S.I. 2008/219, **art. 2(b)**

76A Foreign surveillance operations S

(1) This section applies where—

(a) a foreign police or customs officer is carrying out relevant surveillance outside the United Kingdom which is lawful under the law of the country or territory in which it is being carried out;

(b) circumstances arise by virtue of which the surveillance can for the time being be carried out only in the United Kingdom; and

(c) it is not reasonably practicable in those circumstances for a United Kingdom officer to carry out the surveillance in the United Kingdom in accordance with an authorisation under Part 2 or the Regulation of Investigatory Powers (Scotland) Act 2000.

(2) "Relevant surveillance" means surveillance which—

(a) is carried out in relation to a person who is suspected of having committed a relevant crime; and

(b) is, for the purposes of Part 2, directed surveillance or intrusive surveillance.

(3) "Relevant crime" means crime which—

(a) falls within Article 40(7) of the Schengen Convention; or

(b) is crime for the purposes of any other international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State with the consent of the Scottish Ministers.

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(4) Relevant surveillance carried out by the foreign police or customs officer in the United Kingdom during the permitted period is to be lawful for all purposes if—
   (a) the condition mentioned in subsection (6) is satisfied;
   (b) the officer carries out the surveillance only in places to which members of the public have or are permitted to have access, whether on payment or otherwise; and
   (c) conditions specified in any order made by the Secretary of State with the consent of the Scottish Ministers are satisfied in relation to its carrying out;

but no surveillance is lawful by virtue of this subsection if the officer subsequently seeks to stop and question the person in the United Kingdom in relation to the relevant crime.

(5) The officer is not to be subject to any civil liability in respect of any conduct of his which is incidental to any surveillance that is lawful by virtue of subsection (4).

(6) The condition in this subsection is satisfied if, immediately after the officer enters the United Kingdom—
   (a) he notifies a person designated by the Director General of the **[**[F187]Serious Organised Crime Agency**]** of that fact; and
   (b) (if the officer has not done so before) he requests an application to be made for an authorisation under Part 2, or the Regulation of Investigatory Powers (Scotland) Act 2000, for the carrying out of the surveillance.

(7) "The permitted period" means the period of five hours beginning with the time when the officer enters the United Kingdom.

(8) But a person designated by an order made by the Secretary of State may notify the officer that the surveillance is to cease being lawful by virtue of subsection (4) when he gives the notification.

(9) The Secretary of State is not to make an order under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(10) In this section references to a foreign police or customs officer are to a police or customs officer who, in relation to a country or territory other than the United Kingdom, is an officer for the purposes of—
   (a) Article 40 of the Schengen Convention; or
   (b) any other international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State with the consent of the Scottish Ministers.

(11) In this section—

"the Schengen Convention" means the Convention implementing the Schengen Agreement of 14th June 1985;

"United Kingdom officer" means—
   (a) a member of a police force;
   (b) a member of the **[**[F188]staff of the Serious Organised Crime Agency**]** ;
   (c) **[**[F276]a police member of the Scottish Crime and Drug Enforcement Agency appointed in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);**]**
   (d) **[**[F190]an officer of Revenue and Customs.**]**

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Extent Information

E3 This version extends to Scotland only; a separate version has been created for England, Wales and Northern Ireland only

Textual Amendments

F187 Words in s. 76A(6)(a) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 154(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F188 S. 76A(11): words in the definition of "United Kingdom officer" substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 154(3)(a)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F190 Words in s. 76A(11) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 26**; S.I. 2008/219, **art. 2(b)**

F276 S. 76A(11): words substituted (S.) (1.4.2007) by Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp10), ss. 101, 104, {Sch. 6 para. 8}; S.S.I. 2007/84, **art. 3(2)** (subject to art. 3(3))

Modifications etc. (not altering text)

C61 S. 76A(11) modified (S.) (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(16)**

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) **[**[F191], 71(9) or 76A(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.

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(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.

Textual Amendments

F191 Words in s. 78(3)(a) substituted (26.4.2004) by Crime (International Co-operation) Act 2003 (c. 32), ss. 91, 94, **Sch. 5 para. 80**; S.I. 2004/786, **art. 3(1)(2)**

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.

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81 General interpretation.

(1) In this Act—

"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);

[F192] . . . . . .

"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 [M86]Intelligence Services Act 1994;

"Her Majesty's forces" has the same meaning as in the [M87]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;

[[F193]"justice of the peace" does not include a justice of the peace in Northern Ireland;**]**

"legal proceedings" means civil or criminal proceedings in or before any court or tribunal **[**[F194]or proceedings before an officer in respect of a service offence within the meaning of the Armed Forces Act 2006**]**;

"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 [M88]Police Act 1996 (police forces in England and Wales outside London);

(b) the metropolitan police force;

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(c) the City of London police force;

(d) any police force maintained under or by virtue of section 1 of the [M89]Police (Scotland) Act 1967

(e) the Royal Ulster Constabulary;

(f) the Ministry of Defence Police;

(g) the **[**[F195]Royal Navy Police**]**;

(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 [M90]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 [M91]Interpretation Act 1978) or any statutory rules (within the meaning of the [M92]Statutory Rules (Northern Ireland) Order 1979);

"Surveillance Commissioner" means a Commissioner holding office under section 91 of the [M93]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 **[**[F196]the Wireless Telegraphy Act 2006**]** 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 [M94]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 **[**[F197](eighteen in relation to England and Wales**]** and has no previous

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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.

(4) In this Act "criminal proceedings" includes—

(a) proceedings in the United Kingdom or elsewhere before—

(i) a court-martial constituted under the [M95]Army Act 1955, the [M96]Air Force Act 1955 or the [M97]Naval Discipline Act 1957; [F198]. . .

[F198](ii) . . . . . .

(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 **[**[F199]Royal Navy Police**]**, the Royal Military Police or the Royal Air Force Police, do not include references to any member of **[**[F200]that force who is not for the time being attached to or serving either with that force 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.

Textual Amendments

F192 S. 81(1): definition of "customs officer" repealed (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 92, 94, Sch. 12 para. 27, **Sch. 14**; S.I. 2008/219, **art. 2(d)(ii)**

F193 S. 81(1): definition inserted (1.4.2005) by 2002 c. 26, ss. 10, 87, Sch. 4 para. 40; S.R. 2005/109, **art. 2**, Sch.

F194 S. 81(1): words in the definition of "legal proceedings" inserted (28.3.2009 for certain purposes and otherwise 31.10.2009) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 175(2)(b)**; S.I. 2009/812, **art. 3** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

F195 S. 81(1): words in the definition of "police force" substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 175(2)(c)**; S.I. 2007/1442, **art. 2(1)**

F196 S. 81(1): words in the definition of "wireless telegraphy" substituted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 123, 126, **Sch. 7 para. 24**

F197 Words in s. 81(3)(a) inserted (*prosp.*) by 2000 c. 43, ss. 74, 80(1), **Sch. 7 Pt. II para. 211**

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F198 S. 81(4)(a)(ii) and word preceding it repealed (28.2.2002) by 2001 c. 19, s. 38, **Sch. 7 Pt. 1**; S.I. 2002/345, **art. 2** (subject to art. 3)

F199 Words in s. 81(6)(b) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 175(4)(a)**; S.I. 2007/1442, **art. 2(1)**

F200 Words in s. 81(6)(b) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), ss. 378, 383, **Sch. 16 para. 175(4)(b)**; S.I. 2007/1442, **art. 2(1)**

Modifications etc. (not altering text)

C55 S. 81(5) applied (25.9.2000) by 1989 c. 5, **s. 1(5)** (as inserted (25.9.200) by 2000 c. 23, ss. 82, 83(2), **Sch. 4 para. 4(1)**)
S. 81(5) applied (25.9.2000) by 1994 c. 13, **s. 11(1A)** (as inserted (25.9.2000) by 2000 c. 23, ss. 82, 83(2), **Sch. 4 para. 6** (with s. 82(3)))

C56 S. 81(5) applied (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 42(3)**, 178; S.I. 2005/3495, **art. 2(1)(f)** (subject to art. 2(2))

C57 S. 81(5) applied (24.12.2008) by Counter-Terrorism Act 2008, (c. 28), {ss. 21(4)}, 91, 100 (with s. 101(2)); S.I. 2008/3296, **art. 2**

Marginal Citations

M86 1994 c. 13.
M87 1955 c. 18.
M88 1996 c. 16.
M89 1967 c. 77.
M90 1998 c. 42.
M91 1978 c. 30.
M92 S.I. 1979/1573 (N.I. 12).
M93 1997 c. 50.
M94 1971 c. 80.
M95 1955 c. 18.
M96 1955 c. 19.
M97 1957 c. 53.

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 [F201]. . .affects any power conferred on **[**[F202]a postal operator (within the meaning of the Postal Services Act 2000)**]** 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 [M98]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,

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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 [M99]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 [M100]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.

Textual Amendments

F201 Words in s. 82(3) repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(11))

F202 Words in s. 82(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 135(3)** (with art. 4(8))

Commencement Information

I12 S. 82 wholly in force; s. 82 not in force at Royal Assent see s. 83(2); s. 82(1)(2) in force for certain purposes at 25.9.2000 and s. 82 in force to the extent that it is not already in force at 2.10.2000 by S.I. 2000/2543, **arts. 2**, 3 (subject to transitional provisions in arts. 5, 6)

Marginal Citations

M98 1985 c. 56.

M99 1985 c. 56.

M100 1985 c. 56.

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.

Subordinate Legislation Made

P1 S. 83(2) power partly exercised: different dates appointed for specified provisions by S.I. 2000/2543 (with transitional provisions in art. 5, 6); s. 83(2) power partly excercised: 13.8.2001 appointed for other specified provisions by S.I. 2001/2727; s. 83(2) power partly exercised: 5.1.2004 appointed for specified provisions by {S.I. 2003/3140}, art. 2; s. 83(2) power partly exercised: 1.10.2007 appointed for specified provisions by {S.I. 2007/2196}, art. 2

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SCHEDULES

VALID FROM 17/06/2011

[F203SCHEDULE A1

MONETARY PENALTY NOTICES IN RELATION TO CERTAIN UNLAWFUL INTERCEPTIONS

Textual Amendments

F203 Sch. A1 inserted (17.6.2011) by The Regulation of Investigatory Powers (Monetary Penalty Notices and Consents for Interceptions) Regulations 2011 (S.I. 2011/1340), **regs. 1(2)**, 2(4) {Sch.}

. . . . . .

SCHEDULE 1

Section 30.

RELEVANT PUBLIC AUTHORITIES

PART I

RELEVANT AUTHORITIES FOR THE PURPOSES OF SS. 28 AND 29

Police forces etc.

1 Any police force.

[F204[F205 1A The Civil Nuclear Constabulary.]]

Textual Amendments

F204 Sch. 1 para. 1A inserted (5.1.2004) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (S.I. 2003/3171), **art. 2(2)**

F205 Sch. 1 para. 1A substituted (1.4.2005) by Energy Act 2004 (c. 20), ss. 69, 198(2), **Sch. 14 para. 8(2)**; S.I. 2005/877, **art. 2(1)**, Sch. 1

[F206 2 The Serious Organised Crime Agency.]

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Textual Amendments

F206 Sch. 1 para. 2 substituted (1.4.2006) for Sch. 1 paras. 2, 3 by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 155**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

[F207 2A The Scottish Crime and Drug Enforcement Agency]

Textual Amendments

F207 Sch 1 para. 2A inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(18)**

3 . . . . . .

4 The Serious Fraud Office.

4A The force comprising the special constables appointed under section 79 of the Harbours, Docks and Piers Clauses Act 1847 F209 on the nomination of the Dover Harbour Board.

Textual Amendments

F209 1847 c. 27 (10 & 11 Vict.).

[F210 4B The force comprising the constables appointed under article 3 of the Mersey Docks and Harbour (Police) Order 1975 M103 on the nomination of the Mersey Docks and Harbour Company.]

Textual Amendments

F210 Sch. 1 paras. 4A, 4B added (5.5.2005) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2005 (S.I. 2005/1084), arts. 1(2), **2(1)** (subject to art. 1(3))

Marginal Citations

M103 S.I. 1975/1224.

The intelligence services

5 Any of the intelligence services.

The armed forces

6 Any of Her Majesty's forces.

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[F211 Revenue and Customs]

Textual Amendments

F211 Sch. 1 para. 7 and cross-heading substituted for Sch. 1 paras. 7, 8 and cross-heading (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 28**; S.I. 2008/219, **art. 2(b)**

[F212 7 Her Majesty's Revenue and Customs.]

Textual Amendments

F212 Sch. 1 para. 7 and cross-heading substituted (15.2.2008) for Sch. 1 paras. 7, 8 and cross-heading by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 28**; S.I. 2008/219, **art. 2(b)**

8 . . . . . .

Government departments

F214 9 . . . . . .

Textual Amendments

F214 Sch. 1 Pt. I: by S.I. 2002/794, art. 5(1)(2), Sch. 1 para. 39, **Sch. 2** (with arts. 5(3), 6) it is provided (27.3.2002) that the entry relating to the "Ministry of Agriculture, Fisheries and Food" is repealed and the words "The Department for Environment, Food and Rural Affairs" inserted at the appropriate place

[F215 9ZA The Department for Business, Enterprise and Regulatory Reform.]

Textual Amendments

F215 Sch. 1 para. 9ZA inserted (12.12.2007) by The Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007 (S.I. 2007/3224), arts. 1(2), 15, **Sch. para. 9(a)**

[F216 9A The Department for Communities and Local Government]

Textual Amendments

F216 Sch. 1 para. 9A inserted (21.8.2006) by The Secretary of State for Communities and Local Government Order 2006 (S.I. 2006/1926), arts. 1(2), 9, **Sch. para. 7**

10 The Ministry of Defence.

[F217 The Office of the Deputy Prime Minister.]

Textual Amendments

F217 Sch. 1 Pt. I: by S.I. 2002/2626, art. 20, **Sch. 2 para. 24(a)(b)** it is provided (25.11.2002) that the entry relating to the "Department for Transport, Local Government and the Regions" is repealed, and the

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words "The Department for Transport" and "the Office of the Deputy Prime Minister" inserted at the appropriate place

[[F218]The Department of Energy and Climate Change.**]**

Textual Amendments

F218 Sch. 1: entry inserted (5.3.2009) by virtue of The Secretary of State for Energy and Climate Change Order 2009 (S.I. 2009/229), art. 9, **Sch. 2 para. 3**

[[F214]The Department for Environment, Food and Rural Affairs.**]**

[F219]11 . . . . . .

Textual Amendments

F219 Sch. 1 Pt. 1: by S.I. 2001/2568, Sch. para. 18 it is provided that the entry relating to the "Department of Environment, Transport and the Regions" is repealed and the words "The Department for Transport, Local Government and the Regions" inserted at the appropriate place

12 The Department of Health.

13 The Home Office.

[[F220]13ZA The Ministry of Justice**]**

Textual Amendments

F220 Sch. 1 para. 13ZA inserted (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), arts. 1(2), 8, **Sch. para. 7**

[[F221]13A The Northern Ireland Office.**]**

Textual Amendments

F221 Sch. 1 Pt. 1 para. 13A inserted (5.1.2004) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (S.I. 2003/3171), **art. 2(3)**

[F222]14 . . . . . .

Textual Amendments

F222 Sch. 1 Pt. 1: by S.I. 2002/1397, art. 12, **Sch. para. 16** it is provided (27.6.2002) that the entry relating to the Department of Social Security is repealed and the words "The Department for Work and Pensions" inserted at the appropriate place

[F223]15 . . . . . .

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Textual Amendments

F223 Sch. 1: entry for the "Department of Trade and Industry" omitted (12.12.2007) by virtue of The Secretaries of State for Children, Schools and Families, for Innovation, Universities and Skills and for Business, Enterprise and Regulatory Reform Order 2007 (S.I. 2007/3224), arts. 1(2), 15, **Sch. para. 9(b)**

[[F217]The Department for Transport.**]**

[F217] . . . . . .

[[F222]The Department for Work and Pensions.**]**

[[F224]*The Welsh Assembly Government]*

Textual Amendments

F224 Sch. 1 para. 16 and cross-heading substituted (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)) by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1(2)(3), 3, **Sch. 1 para. 76(3)**

[[F225]16 The Welsh Assembly Government.**]**

Textual Amendments

F225 Sch. 1 para. 16 and cross-heading substituted (the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2)(3) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)) by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), arts. 1(2)(3), 3, **Sch. 1 para. 76(3)**

Local authorities

[[F226]17 Any county council or district council in England, a London borough council, the Common Council of the City of London in its capacity as a local authority, the Council of the Isles of Scilly, and any county council or county borough council in Wales.**]**

Textual Amendments

F226 Sch. 1 Pt. 1 para. 17 substituted (5.1.2004) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (S.I. 2003/3171), **art. 2(4)**

17A Any fire authority within the meaning of the Fire Services Act 1947 [F227] (read with paragraph 2 of Schedule 11 to the Local Government Act 1985 [F228]).

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Textual Amendments

F227 1947 c. 41.

F228 1985 c. 51.

Other bodies[F229F230F231]

Textual Amendments

F229 Sch. 1 Pt. 1 paras. 20A-20D inserted (5.1.2004) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (S.I. 2003/3171), **art. 2(7)**

F230 Sch. 1 paras. 20E, 20F inserted (26.7.2006) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2006 (S.I. 2006/1874), arts. 1, **2**

F231 Sch. 1 para. 23A inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 406, 411, **Sch. 17 para. 161(3)** (with transitional provisions in Sch. 18); S.I. 2003/3142, **art. 3(1)** Sch. 1 {subject to art. 3(3)}

[[F232]17B The Charity Commission.**]**

Textual Amendments

F232 Sch. 1 Pt. 1 para. 17B inserted (5.1.2004) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (S.I. 2003/3171), **art. 2(6)**

18 The Environment Agency.

19 The Financial Services Authority.

20 The Food Standards Agency.

[[F229]20A **[**[F233]Gambling Commission**]**

Textual Amendments

F233 Words in Sch. 1 para. 20A substituted (1.10.2005) by Gambling Act 2005 (c. 19), ss. 356, 358, **Sch. 16 para. 14** (with ss. 352, 354, Sch. 16 para. 21); S.I. 2005/2455, **art. 2(1)**, Sch.

20B The Office of Fair Trading.

20C The Office of the Police Ombudsman for Northern Ireland.**]**

20D The Postal Services Commission.

[[F230]20E The Gangmasters Licensing Authority.**]**

20F The Commission for Healthcare Audit and Inspection.

Status: *Point in time view as at 05/03/2009. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 06/04/2010

[F234 20G The Health and Safety Executive.]

Textual Amendments

F234 Sch. 1 para. 20G inserted (6.4.2010) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (S.I. 2010/521), arts. 1(1), **2(4)** (with art. 9)

F235 21 . . . . . .

Textual Amendments

F235 Sch. 1 para. 21 repealed (15.11.2001) by S.I. 2001/3686, **art. 6(17)(b)**

22 F236 . . . . . .

Textual Amendments

F236 Sch. 1 para. 22 repealed (3.7.2002) by S.I. 2002/1555, **art. 26**

23 [F237 A universal service provider (within the meaning of the Postal Services Act 2000) acting in connection with the provision of a universal postal service (within the meaning of that Act)]..

Textual Amendments

F237 Words in Sch. 1 para. 23 substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 135(4)** (with art. 4(8))

[F231 23A The Office of Communications.]

Northern Ireland authorities

[23A The Department of Agriculture and Rural Development.

Extent Information

E2 Sch. 1 Pt. 1 paras. 23A-23D and heading 'Northern Ireland authorities' inserted (2.7.2002) by Regulation of Investigatory Powers Act 2000 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/183), arts. 1, **3**

23B The Department of Enterprise, Trade and Investment.

Extent Information

E2 Sch. 1 Pt. 1 paras. 23A-23D and heading 'Northern Ireland authorities' inserted (2.7.2002) by Regulation of Investigatory Powers Act 2000 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/183), arts. 1, **3**

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23C The Department of the Environment.

Extent Information

E2 Sch. 1 Pt. 1 paras. 23A-23D and heading 'Northern Ireland authorities' inserted (2.7.2002) by Regulation of Investigatory Powers Act 2000 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/183), arts. 1, **3**

23D Any district council (within the meaning of section 44 of the Interpretation Act (Northern Ireland) 1954 [M104]).

Extent Information

E2 Sch. 1 Pt. 1 paras. 23A-23D and heading 'Northern Ireland authorities' inserted (2.7.2002) by Regulation of Investigatory Powers Act 2000 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/183), arts. 1, **3**

Marginal Citations

M104 1954 c. 33 (N.I.)

VALID FROM 12/04/2010

[[F238]23E The Department of Justice.**]]**

Extent Information

E2 Sch. 1 Pt. 1 paras. 23A-23D and heading 'Northern Ireland authorities' inserted (2.7.2002) by Regulation of Investigatory Powers Act 2000 (Amendment) Order (Northern Ireland) 2002 (S.R. 2002/183), arts. 1, **3**

Textual Amendments

F238 Sch. 1 para. 23E inserted (12.4.2010) by The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 6(1), **Sch. 4 para. 26** (with arts. 28-31)

PART II

RELEVANT AUTHORITIES FOR THE PURPOSES ONLY OF S. 28[F239F240]

Textual Amendments

F239 Sch. 1 paras. 27A-27D and cross-headings inserted (5.1.2004) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (S.I. 2003/3171), **art. 3(2)**

F240 Sch. 1 Pt. 2 paras. 29-40 and heading 'Northern Ireland authorities' inserted (2.7.2002) by Regulation of Investigatory Powers Act 2000 (Amendment) Order (Northern Ireland) 2002 (SR 2002/183), arts. 1, {4}

The Health and Safety Executive

24 The Health and Safety Executive.

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NHS bodies in England and Wales

25 [F241] . . . . . .

Textual Amendments

F241 Sch. 1 Pt. 1 para. 25 omitted (5.5.2005) by virtue of The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2005 (S.I. 2005/1084), arts. 1(2), **2(2)** (subject to art. 1(3))

26 A Special Health Authority established under **[**[F242]section 28 of the National Health Service Act 2006 or section 22 of the National Health Service (Wales) Act 2006**]** .

Textual Amendments

F242 Words in Sch. 1 para. 26 substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8, **Sch. 1 para. 209(a)** (with Sch. 3 Pt. 1)

27 [F243] . . . . . .

Textual Amendments

F243 Sch. 1 para. 27 omitted (26.7.2006) by virtue of The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2006 (S.I. 2006/1874), **art. 3(a)**

[[F244]27A [F245] . . . . . **]**

Textual Amendments

F244 Sch. 1 paras. 27A-27D and cross-headings inserted (5.1.2004) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 (S.I. 2003/3171), **art. 3(2)**

F245 Sch. 1 para. 27A omitted (26.7.2006) by virtue of The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2006 (S.I. 2006/1874), **art. 3(b)**

[[F239]***[***[F246]*HM Chief Inspector of Education, Children's Services and Skills****]***

Textual Amendments

F246 Sch. 1 Pt. 2 para. 27B and cross-heading substituted (1.4.2007) by Education and Inspections Act 2006 (c. 40), ss. 157, 188, **Sch. 14 para. 68**; S.I. 2007/935, **art. 5(gg)**

[[F247]27B Her Majesty's Chief Inspector of Education, Children's Services and Skills.**]**

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Textual Amendments

F247 Sch. 1 Pt. 2 para. 27B and cross-heading substituted (1.4.2007) by Education and Inspections Act 2006 (c. 40), ss. 157, 188, **Sch. 14 para. 68**; S.I. 2007/935, **art. 5(gg)**

The Information Commissioner

27C The Information Commissioner.

[F248] . . .

Textual Amendments

F248 Sch. 1 para. 27D and cross-heading "The Royal Parks Constabulary" repealed (8.5.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 161, 174, 178, Sch. 13 para. 10, **Sch. 17**; S.I. 2006/1085, **art. 2(b)(d)(i)**

27D [F249] . . . . . .]

Textual Amendments

F249 Sch. 1 para. 27D and cross-heading "The Royal Parks Constabulary" repealed (8.5.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 161, 174, 178, Sch. 13 para. 10, **Sch. 17**; S.I. 2006/1085, **art. 2(b)(d)(i)**

The Royal Pharmaceutical Society of Great Britain

28 The Royal Pharmaceutical Society of Great Britain.

VALID FROM 06/04/2010

[[F250] *The Child Maintenance and Enforcement Commission*

Textual Amendments

F250 Sch. 1 paras. 28A-28E and cross-headings inserted (6.4.2010) by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (S.I. 2010/521), arts. 1(1), **2(6)** (with art. 9)

28A The Child Maintenance and Enforcement Commission.

Status: *Point in time view as at 05/03/2009. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 06/04/2010

Special constables nominated by the Dover Harbour Board

28B The force comprising the special constables appointed under section 79 of the Harbours, Docks and Piers Clauses Act 1847 on the nomination of the Dover Harbour Board.

VALID FROM 06/04/2010

The Department for Work and Pensions

28C The Department for Work and Pensions.

VALID FROM 06/04/2010

The Postal Services Commission

28D The Postal Services Commission

VALID FROM 06/04/2010

*Universal service providers***]**

28E A universal service provider (within the meaning of the Postal Services Act 2000) acting in connection with the provision of a universal postal service (within the meaning of that Act).

[[F240]*Northern Ireland authorities*

29 The Department of Health, Social Services and Public Safety.

30 The Department for Regional Development.

31 The Department for Social Development.

32 The Department of Culture, Arts and Leisure.

33 The Foyle, Carlingford and Irish Lights Commission.

34 The Fisheries Conservancy Board for Northern Ireland.

35 A Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 [M105].

Status: *Point in time view as at 05/03/2009. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations
M105 S.I. 1991/194 (N.I. 1)

36 A Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 [M106].

Marginal Citations
M106 S.I. 1972/1265 (N.I. 14)

37 The Health and Safety Executive for Northern Ireland.

38 The Northern Ireland Central Services Agency for the Health and Social Services.

39 The Fire Authority for Northern Ireland.

40 The Northern Ireland Housing Executive.**]**

SCHEDULE 2

Section 49.

PERSONS HAVING THE APPROPRIATE PERMISSION

Requirement that appropriate permission is granted by a judge

1 (1) Subject to the following provisions of this Schedule, a person has the appropriate permission in relation to any protected information if, and only if, written permission for the giving of section 49 notices in relation to that information has been granted—
(a) in England and Wales, by a Circuit judge;
(b) in Scotland, by a sheriff; or
(c) in Northern Ireland, by a county court judge.

(2) Nothing in paragraphs 2 to 5 of this Schedule providing for the manner in which a person may be granted the appropriate permission in relation to any protected information without a grant under this paragraph shall be construed as requiring any further permission to be obtained in a case in which permission has been granted under this paragraph.

Data obtained under warrant etc.

2 (1) This paragraph applies in the case of protected information falling within section 49(1)(a), (b) or (c) where the statutory power in question is one exercised, or to be exercised, in accordance with—
(a) a warrant issued by the Secretary of State or a person holding judicial office; or
(b) an authorisation under Part III of the [M107]Police Act 1997 (authorisation of otherwise unlawful action in respect of property).

(2) Subject to sub-paragraphs (3) to (5) and paragraph 6(1), a person has the appropriate permission in relation to that protected information (without any grant of permission under paragraph 1) if—

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(a) the warrant or, as the case may be, the authorisation contained the relevant authority's permission for the giving of section 49 notices in relation to protected information to be obtained under the warrant or authorisation; or

(b) since the issue of the warrant or authorisation, written permission has been granted by the relevant authority for the giving of such notices in relation to protected information obtained under the warrant or authorisation.

(3) Only persons holding office under the Crown, the police **[**[F251], SOCA**]**[[F252], SCDEA**]** and **[**[F253]Her Majesty's Revenue and Customs**]** shall be capable of having the appropriate permission in relation to protected information obtained, or to be obtained, under a warrant issued by the Secretary of State.

(4) Only a person who—

(a) was entitled to exercise the power conferred by the warrant, or

(b) is of the description of persons on whom the power conferred by the warrant was, or could have been, conferred,

shall be capable of having the appropriate permission in relation to protected information obtained, or to be obtained, under a warrant issued by a person holding judicial office.

(5) Only the police **[**[F254], SOCA**]**[[F252], SCDEA**]** and **[**[F253]Her Majesty's Revenue and Customs**]** shall be capable of having the appropriate permission in relation to protected information obtained, or to be obtained, under an authorisation under Part III of the [M108]Police Act 1997.

(6) In this paragraph "the relevant authority"—

(a) in relation to a warrant issued by the Secretary of State, means the Secretary of State;

(b) in relation to a warrant issued by a person holding judicial office, means any person holding any judicial office that would have entitled him to issue the warrant; and

(c) in relation to protected information obtained under an authorisation under Part III of the [M109]Police Act 1997, means (subject to sub-paragraph (7)) an authorising officer within the meaning of section 93 of that Act.

(7) Section 94 of the [M110]Police Act 1997 (power of other persons to grant authorisations in urgent cases) shall apply in relation to—

(a) an application for permission for the giving of section 49 notices in relation to protected information obtained, or to be obtained, under an authorisation under Part III of that Act, and

(b) the powers of any authorising officer (within the meaning of section 93 of that Act) to grant such a permission,

as it applies in relation to an application for an authorisation under section 93 of that Act and the powers of such an officer under that section.

(8) References in this paragraph to a person holding judicial office are references to—

(a) any judge of the Crown Court or of the High Court of Justiciary;

(b) any sheriff;

(c) any justice of the peace;

(d) any resident magistrate in Northern Ireland; or

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(e) any person holding any such judicial office as entitles him to exercise the jurisdiction of a judge of the Crown Court or of a justice of the peace.

(9) Protected information that comes into a person's possession by means of the exercise of any statutory power which—

(a) is exercisable without a warrant, but

(b) is so exercisable in the course of, or in connection with, the exercise of another statutory power for which a warrant is required,

shall not be taken, by reason only of the warrant required for the exercise of the power mentioned in paragraph (b), to be information in the case of which this paragraph applies.

Textual Amendments

F251 Words in Sch. 2 para. 2(3) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 156(2)(a)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F252 Words in Sch. 2 para. 2(3)(5) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(19)(a)**

F253 Words in Sch. 2 para. 2(3)(5) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 29(1)**; S.I. 2008/219, **art. 2(b)**

F254 Words in Sch. 2 para. 2(5) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 156(2)(b)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

Modifications etc. (not altering text)

C58 Sch. 2 para. 2(3) restricted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 16, 17, 53(1), **Sch. 2 Pt. 1 para. 11(2)(c)**; S.I. 2005/1126, **art. 2(2)(d)**

Marginal Citations

M107 1997 c. 50.

M108 1997 c. 50.

M109 1997 c. 50.

M110 1997 c. 50.

Data obtained by the intelligence services under statute but without a warrant

3 (1) This paragraph applies in the case of protected information falling within section 49(1)(a), (b) or (c) which—

(a) has come into the possession of any of the intelligence services or is likely to do so; and

(b) is not information in the case of which paragraph 2 applies.

(2) Subject to paragraph 6(1), a person has the appropriate permission in relation to that protected information (without any grant of permission under paragraph 1) if written permission for the giving of section 49 notices in relation to that information has been granted by the Secretary of State.

(3) Sub-paragraph (2) applies where the protected information is in the possession, or (as the case may be) is likely to come into the possession, of both—

(a) one or more of the intelligence services, and

(b) a public authority which is not one of the intelligence services,

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as if a grant of permission under paragraph 1 were unnecessary only where the application to the Secretary of State for permission under that sub-paragraph is made by or on behalf of a member of one of the intelligence services.

Data obtained under statute by other persons but without a warrant

4 (1) This paragraph applies—

(a) in the case of protected information falling within section 49(1)(a), (b) or (c) which is not information in the case of which paragraph 2 or 3 applies; and

(b) in the case of protected information falling within section 49(1)(d) which is not information also falling within section 49(1)(a), (b) or (c) in the case of which paragraph 3 applies.

(2) Subject to paragraph 6, where—

(a) the statutory power was exercised, or is likely to be exercised, by the police, **[**[F255]SOCA,**][**[F256]SCDEA,**][**[F257]Her Majesty's Revenue and Customs**]** or a member of Her Majesty's forces, or

(b) the information was provided or disclosed, or is likely to be provided or disclosed, to the police, **[**[F255]SOCA,**][**[F256]SCDEA,**][**[F257]Her Majesty's Revenue and Customs**]** or a member of Her Majesty's forces, or

(c) the information is in the possession of, or is likely to come into the possession of, the police, **[**[F255]SOCA,**][**[F256]SCDEA,**][**[F257]Her Majesty's Revenue and Customs**]** or a member of Her Majesty's forces,

the police, **[**[F255]SOCA,**][**[F256]SCDEA,**][**[F257]Her Majesty's Revenue and Customs**]** or, as the case may be, members of Her Majesty's forces have the appropriate permission in relation to the protected information, without any grant of permission under paragraph 1.

(3) In any other case a person shall not have the appropriate permission by virtue of a grant of permission under paragraph 1 unless he is a person falling within sub-paragraph (4).

(4) A person falls within this sub-paragraph if, as the case may be—

(a) he is the person who exercised the statutory power or is of the description of persons who would have been entitled to exercise it;

(b) he is the person to whom the protected information was provided or disclosed, or is of a description of person the provision or disclosure of the information to whom would have discharged the statutory duty; or

(c) he is a person who is likely to be a person falling within paragraph (a) or (b) when the power is exercised or the protected information provided or disclosed.

Textual Amendments

F255 Words in Sch. 2 para. 4(2) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 156(3)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F256 Words in Sch. 2 para. 4(2) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(19)(b)**

F257 Words in Sch. 2 para. 4(2) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 29(1)**; S.I. 2008/219, **art. 2(b)**

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Modifications etc. (not altering text)

C59 Sch. 2 para. 4(2) restricted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), ss. 16, 17, 53(1), **Sch. 2 Pt. 1 para. 11(2)(c)**; S.I. 2005/1126, **art. 2(2)(d)**

Data obtained without the exercise of statutory powers

5 (1) This paragraph applies in the case of protected information falling within section 49(1)(e).

(2) Subject to paragraph 6, a person has the appropriate permission in relation to that protected information (without any grant of permission under paragraph 1) if—

(a) the information is in the possession of any of the intelligence services, or is likely to come into the possession of any of those services; and

(b) written permission for the giving of section 49 notices in relation to that information has been granted by the Secretary of State.

(3) Sub-paragraph (2) applies where the protected information is in the possession, or (as the case may be) is likely to come into the possession, of both—

(a) one or more of the intelligence services, and

(b) the police **[**[F258], SOCA**]**[F259], SCDEA**]** or **[**[F260]Her Majesty's Revenue and Customs**]** ,

as if a grant of permission under paragraph 1 were unnecessary only where the application to the Secretary of State for permission under that sub-paragraph is made by or on behalf of a member of one of the intelligence services.

Textual Amendments

F258 Words in Sch. 2 para. 5(3)(b) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 156(4)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F259 Word in Sch. 2 para. 5(3)(b) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(19)(c)**

F260 Words in Sch. 2 para. 5(3)(b) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 29(1)**; S.I. 2008/219, **art. 2(b)**

General requirements relating to the appropriate permission

6 (1) A person does not have the appropriate permission in relation to any protected information unless he is either—

(a) a person who has the protected information in his possession or is likely to obtain possession of it; or

(b) a person who is authorised (apart from this Act) to act on behalf of such a person.

(2) Subject to sub-paragraph (3), a constable does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless—

(a) he is of or above the rank of superintendent; or

(b) permission to give a section 49 notice in relation to that information has been granted by a person holding the rank of superintendent, or any higher rank.

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(3) In the case of protected information that has come into the police's possession by means of the exercise of powers conferred by—

(a) section 44 of the [M111]Terrorism Act 2000 (power to stop and search), or

(b) section 13A or 13B of the [M112]Prevention of Terrorism (Temporary Provisions) Act 1989 (which had effect for similar purposes before the coming into force of section 44 of the Terrorism Act 2000),

the permission required by sub-paragraph (2) shall not be granted by any person below the rank mentioned in section 44(4) of that Act of 2000 or, as the case may be, section 13A(1) of that Act of 1989.

[[F261](3A) A member of the staff of the Serious Organised Crime Agency does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless permission to give a section 49 notice in relation to that information has been granted—

(a) by the Director General; or

(b) by a member of the staff of the Agency of or above such level as the Director General may designate for the purposes of this sub-paragraph.**]**

[[F262](3B) A member of the Scottish Crime and Drug Enforcement Agency does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless–

(a) he is of or above the rank of superintendent; or

(b) permission to give a section 49 notice in relation to that information has been granted by the Director General of that Agency;**]**

(4) **[**[F263]An officer of Revenue and Customs**]** does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless permission to give a section 49 notice in relation to that information has been granted—

(a) by **[**[F264]the Commissioners for Her Majesty's Revenue and Customs**]** ; or

(b) by an officer of **[**[F265]Revenue and Customs**]** of or above such level as **[**[F266]the Commissioners**]** may designate for the purposes of this sub-paragraph.

(5) A member of Her Majesty's forces does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless—

(a) he is of or above the rank of lieutenant colonel or its equivalent; or

(b) permission to give a section 49 notice in relation to that information has been granted by a person holding the rank of lieutenant colonel or its equivalent, or by a person holding a rank higher than lieutenant colonel or its equivalent.

[[F267](6) In sub-paragraph (2) "constable" does not include a constable who is a member of the staff of the Serious Organised Crime Agency **[**[F268]or a constable who is a member of the Scottish Crime and Drug Enforcement Agency**]** .**]**

Textual Amendments

F261 Sch. 2 para. 6(3A) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 156(5)(a)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F262 Sch. 2 para. 6(3B) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(19)(d)(i)**

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F263 Words in Sch. 2 para. 6(4) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 29(2)(a)**; S.I. 2008/219, **art. 2(a)**

F264 Words in Sch. 2 para. 6(4) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 29(2)(a)**; S.I. 2008/219, **art. 2(b)**

F265 Words in Sch. 2 para. 6(4) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 29(2)(a)**; S.I. 2008/219, **art. 2(c)**

F266 Words in Sch. 2 para. 6(4) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), ss. 88, 94, **Sch. 12 para. 29(2)(a)**; S.I. 2008/219, **art. 2(d)**

F267 Sch. 2 para. 6(6) added (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 59, 178, **Sch. 4 para. 156(5)(b)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))

F268 Words in Sch. 2 para. 6(6) inserted (1.4.2007) by The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098), arts. 1(3), 6, **Sch. para. 4(19)(d)(ii)**

Modifications etc. (not altering text)

C60 Sch. 2 para. 6(3) modified (18.3.2011) by The Terrorism Act 2000 (Remedial) Order 2011 (S.I. 2011/631), arts. 1, 5, **Sch. 2 para. 4**

Marginal Citations

M111 2000 c. 11.

M112 1989 c. 4.

Duration of permission

7 (1) A permission granted by any person under any provision of this Schedule shall not entitle any person to give a section 49 notice at any time after the permission has ceased to have effect.

(2) Such a permission, once granted, shall continue to have effect (notwithstanding the cancellation, expiry or other discharge of any warrant or authorisation in which it is contained or to which it relates) until such time (if any) as it—

(a) expires in accordance with any limitation on its duration that was contained in its terms; or

(b) is withdrawn by the person who granted it or by a person holding any office or other position that would have entitled him to grant it.

Formalities for permissions granted by the Secretary of State

8 A permission for the purposes of any provision of this Schedule shall not be granted by the Secretary of State except—

(a) under his hand; or

(b) in an urgent case in which the Secretary of State has expressly authorised the grant of the permission, under the hand of a senior official.

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SCHEDULE 3

Section 65.

THE TRIBUNAL

Membership of the Tribunal

1 (1) A person shall not be appointed as a member of the Tribunal unless he is—

(a) a person who holds or has held a high judicial office (within the meaning of the [M113]Appellate Jurisdiction Act 1876);

[[F269](b) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis;**]**

(c) an advocate or solicitor in Scotland of at least **[**[F270]seven**]** years' standing; or

(d) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least **[**[F270]seven**]** years' standing.

(2) Subject to the following provisions of this paragraph, the members of the Tribunal shall hold office during good behaviour.

(3) A member of the Tribunal shall vacate office at the end of the period of five years beginning with the day of his appointment, but shall be eligible for reappointment.

(4) A member of the Tribunal may be relieved of office by Her Majesty at his own request.

(5) A member of the Tribunal may be removed from office by Her Majesty on an Address presented to Her by both Houses of Parliament.

(6) If the Scottish Parliament passes a resolution calling for the removal of a member of the Tribunal, it shall be the duty of the Secretary of State to secure that a motion for the presentation of an Address to Her Majesty for the removal of that member, and the resolution of the Scottish Parliament, are considered by each House of Parliament.

Textual Amendments

F269 Sch. 3 para. 1(1)(b) substituted (21.7.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, **Sch. 10 para. 33(2)**; S.I. 2008/1653, **art. 2(d)**

F270 Words in Sch. 3 para. 1(1)(c)(d) substituted (21.7.2008) by Tribunals, Courts and Enforcement Act 2007 (c. 15), ss. 50, 148, **Sch. 10 para. 33(3)**; S.I. 2008/1653, **art. 2(d)**

Marginal Citations

M113 1876 c. 59.

President and Vice-President

2 (1) Her Majesty may by Letters Patent appoint as President or Vice-President of the Tribunal a person who is, or by virtue of those Letters will be, a member of the Tribunal.

(2) A person shall not be appointed President of the Tribunal unless he holds or has held a high judicial office (within the meaning of the [M114]Appellate Jurisdiction Act 1876).

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(3) If at any time—

(a) the President of the Tribunal is temporarily unable to carry out any functions conferred on him by this Schedule or any rules under section 69, or

(b) the office of President of the Tribunal is for the time being vacant,

the Vice-President shall carry out those functions.

(4) A person shall cease to be President or Vice-President of the Tribunal if he ceases to be a member of the Tribunal.

Marginal Citations

M114 1876 c. 59.

Members of the Tribunal with special responsibilities

3 (1) The President of the Tribunal shall designate one or more members of the Tribunal as the member or members having responsibilities in relation to matters involving the intelligence services.

(2) It shall be the duty of the President of the Tribunal, in exercising any power conferred on him by rules under section 69 to allocate the members of the Tribunal who are to consider or hear any complaint, proceedings, reference or preliminary or incidental matter, to exercise that power in a case in which the complaint, proceedings or reference relates to, or to a matter involving—

(a) an allegation against any of the intelligence services or any member of any of those services, or

(b) conduct by or on behalf of any of those services or any member of any of those services,

in such manner as secures that the allocated members consist of, or include, one or more of the members for the time being designated under sub-paragraph (1).

Salaries and expenses

4 (1) The Secretary of State shall pay to the members of the Tribunal out of money provided by Parliament such remuneration and allowances as he may with the approval of the Treasury determine.

(2) Such expenses of the Tribunal as the Secretary of State may with the approval of the Treasury determine shall be defrayed by him out of money provided by Parliament.

Officers

5 (1) The Secretary of State may, after consultation with the Tribunal and with the approval of the Treasury as to numbers, provide the Tribunal with such officers as he thinks necessary for the proper discharge of their functions.

(2) The Tribunal may authorise any officer provided under this paragraph to obtain any documents or information on the Tribunal's behalf.

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Parliamentary disqualification

6 In Part II of Schedule 1 to the [M115]House of Commons Disqualification Act 1975 and in Part II of Schedule 1 to the [M116]Northern Ireland Assembly Disqualification Act 1975 (bodies whose members are disqualified) there shall be inserted (at the appropriate places) the following entry—

"The Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000".

Marginal Citations
M115 1975 c. 24.
M116 1975 c. 25.

SCHEDULE 4

Section 82.

CONSEQUENTIAL AMENDMENTS

The Post Office Act 1953 (c. 36)

[F271]1 . . . . . .

Textual Amendments
F271 Sch. 4 para. 1 repealed (26.3.2001) by S. I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(11))

The Post Office Act 1969 (c. 48)

[F272]2 . . . . . .

Textual Amendments
F272 Sch. 4 para. 2 repealed (26.3.2001) by S. I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(11))

The Telecommunications Act 1984 (c. 12)

3 **[**[F273]In section 45 of the [M117]Telecommunications Act 1984 (offence of disclosing of messages and use of telecommunication system), for subsections (2) and (3) there shall be substituted—

"(2) Subsection (1) above does not apply to any disclosure made—

(a) in accordance with the order of any court or for the purposes of any criminal proceedings;

(b) in accordance with any warrant, authorisation or notice issued, granted or given under any provision of the Regulation of Investigatory Powers Act 2000;

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(c) in compliance with any requirement imposed (apart from that Act) in consequence of the exercise by any person of any statutory power exercisable by him for the purpose of obtaining any document or other information; or

(d) in pursuance of any duty under that Act of 2000, or under Part III of the [M118]Police Act 1997, to provide information or produce any document to the Interception of Communications Commissioner or to the tribunal established under section 65 of that Act of 2000.

(3) In subsection (2) above "criminal proceedings" and "statutory power" have the same meanings as in the Regulation of Investigatory Powers Act 2000."**]**

Textual Amendments

F273 Sch. 4 para. 3 repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406, 408, 411, **Sch. 19(1)** (with transitional provisions in Sch. 18); S.I. 2003/1900, arts. 1(2), **2(1)**, 3(1), Sch. 1; S.I. 2003/3142, **art. 3(2)** (with art. 11)

Marginal Citations

M117 1984 c. 12.
M118 1997 c. 50.

The Security Service Act 1989 (c. 5)

4 (1) In section 1 of the [M119]Security Service Act 1989 (functions of the Security Service), after subsection (4) there shall be inserted—

"(5) Section 81(5) of the Regulation of Investigatory Powers Act 2000 (meaning of "prevention" and "detection"), so far as it relates to serious crime, shall apply for the purposes of this Act as it applies for the purposes of the provisions of that Act not contained in Chapter I of Part I."

(2) In section 2(2)(a) of that Act (duty of Director General to secure that information not disclosed except for authorised purposes), for "preventing or detecting" there shall be substituted " the prevention or detection of ".

Marginal Citations

M119 1989 c. 5.

The Official Secrets Act 1989 (c. 6)

5 In section 4(3)(a) of the [M120]Official Secrets Act 1989 (offence of disclosing interception information), after "1985" there shall be inserted " or under the authority of an interception warrant under section 5 of the Regulation of Investigatory Powers Act 2000 ".

Marginal Citations

M120 1989 c. 6.

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The Intelligence Services Act 1994 (c. 13)

6 In section 11 of the [M121]Intelligence Services Act 1994 (interpretation), after subsection (1) there shall be inserted—

"(1A) Section 81(5) of the Regulation of Investigatory Powers Act 2000 (meaning of "prevention" and "detection"), so far as it relates to serious crime, shall apply for the purposes of this Act as it applies for the purposes of Chapter I of Part I of that Act."

Marginal Citations
M121 1994 c. 13.

The Criminal Procedure and Investigations Act 1996 (c. 25)

7 (1) In each of sections 3(7), 7(6), 8(6) and 9(9) of the [M122]Criminal Procedure and Investigations Act 1996 (exceptions for interceptions from obligations to make disclosures to the defence), for paragraphs (a) and (b) there shall be substituted " it is material the disclosure of which is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000. "

(2) In section 23(6) of that Act (code of practice not to apply to material intercepted under the Interception of Communications Act 1985), after "1985" there shall be inserted " or under the authority of an interception warrant under section 5 of the Regulation of Investigatory Powers Act 2000 ".

Marginal Citations
M122 1996 c. 25.

The Police Act 1997 (c. 50)

8 (1) In section 91(9) of the [M123]Police Act 1997 (staff for Surveillance Commissioners)—

(a) after "Chief Commissioner" there shall be inserted " and subject to the approval of the Treasury as to numbers "; and

(b) after "Commissioners" there shall be inserted " and any Assistant Surveillance Commissioners holding office under section 63 of the Regulation of Investigatory Powers Act 2000 ".

(2) In section 93(3) of that Act (persons who may make an application to an authorising officer within section 93(5))—

(a) in paragraph (a), for "(e)" there shall be substituted " (ea) or (ee) "; and

(b) after that paragraph there shall be inserted—

"(aa) if the authorising officer is within subsection (5)(eb) to (ed), by a member, as the case may be, of the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police;".

(3) In section 94(1) of that Act (circumstances in which authorisations may be given in absence of authorising officer), in paragraph (b), for ", (f), (g) or (h)" there shall be substituted " or (f) ", and after that paragraph there shall be inserted "or

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(c) if the authorising officer is within paragraph (g) of section 93(5), it is also not reasonably practicable for the application to be considered either—

(i) by any other person designated for the purposes of that paragraph; or

(ii) by the designated deputy of the Director General of the National Crime Squad."

(4) In section 94(2) of that Act (persons who may act in absence of the authorising officer)—

(a) after paragraph (d), there shall be inserted—

"(da) where the authorising officer is within paragraph (ea) of that subsection, by a person holding the rank of deputy or assistant chief constable in the Ministry of Defence Police;

(db) where the authorising officer is within paragraph (eb) of that subsection, by a person holding the position of assistant Provost Marshal in the Royal Navy Regulating Branch;

(dc) where the authorising officer is within paragraph (ec) or (ed) of that subsection, by a person holding the position of deputy Provost Marshal in the Royal Military Police or, as the case may be, in the Royal Air Force Police;

(dd) where the authorising officer is within paragraph (ee) of that subsection, by a person holding the rank of deputy or assistant chief constable in the British Transport Police;";

(b) in paragraph (e), the words "or (g)" and "or, as the case may be, of the National Crime Squad" shall be omitted; and

(c) [F274] . . . . . .

(5) [F275] . . . . . .

(6) In section 95 of that Act (authorisations: form and duration etc.)—

(a) in each of subsections (4) and (5), for the words from "the action" onwards there shall be substituted " the authorisation is one in relation to which the requirements of paragraphs (a) and (b) of section 93(2) are no longer satisfied. "; and

(b) in subsection (6), for "or (e)" there shall be substituted " , (e) or (g) ".

(7) In section 97 of that Act (authorisations requiring approval), in subsection (6), the words from "(and paragraph 7" onwards shall be omitted, and after that subsection there shall be inserted—

"(6A) The reference in subsection (6) to the authorising officer who gave the authorisation or in whose absence it was given shall be construed, in the case of an authorisation given by or in the absence of a person within paragraph (b), (e) or (g) of section 93(5), as a reference to the Commissioner of Police, Chief Constable or, as the case may be, Director General mentioned in the paragraph concerned."

(8) In section 103(7) of that Act (quashing authorisations), for the words from "and paragraph 7" onwards there shall be substituted " and subsection (6A) of section 97 shall apply for the purposes of this subsection as it applies for the purposes of subsection (6) of that section. "

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(9) In section 105 of that Act (appeals by authorising officers: supplementary), in subsection (1)(a), the word "and" shall be inserted at the end of sub-paragraph (i), and sub-paragraph (iii) and the word "and" immediately preceding it shall be omitted.

(10) In section 107 of that Act—

(a) in subsection (2) (report of Chief Surveillance Commissioner on the discharge of his functions under Part III of that Act)—

(i) for "the discharge of functions under this Part" there shall be substituted " the matters with which he is concerned "; and

(ii) for "any matter relating to those functions" there shall be substituted " anything relating to any of those matters ";

(b) in subsection (4) (matters that may be excluded from a report), for "the prevention or detection of serious crime or otherwise" there shall be substituted " any of the purposes for which authorisations may be given or granted under this Part of this Act 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 or "; and

(c) after subsection (5) (duty to co-operate with the Chief Surveillance Commissioner) there shall be inserted the subsections set out in sub-paragraph (11).

(11) The subsections inserted after subsection (5) of section 107 of that Act are as follows—

"(5A) It shall be the duty of—

(a) every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Chief Commissioner,

(b) every person who has engaged in conduct with the authority of such an authorisation,

(c) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a),

(d) every person who holds or has held any office, rank or position with any public authority for whose benefit (within the meaning of Part II of the Regulation of Investigatory Powers Act 2000) activities which are or may be subject to any such review have been or may be carried out, and

(e) every person to whom a notice under section 49 of the Regulation of Investigatory Powers Act 2000 (notices imposing a disclosure requirement in respect of information protected by a key) has been given in relation to any information obtained by conduct to which such an authorisation relates,

to disclose or provide to the Chief Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.

(5B) It shall be the duty of every Commissioner to give the tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000 all such assistance (including his opinion as to any issue falling to be determined by that tribunal) as that tribunal may require—

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(a) in connection with the investigation of any matter by that tribunal; or

(b) otherwise for the purposes of that tribunal's consideration or determination of any matter.

(5C) In this section "public authority" means any public authority within the meaning of section 6 of the [M124]Human Rights Act 1998 (acts of public authorities) other than a court or tribunal."

(12) In section 108(1) of that Act after "In this Part—" there shall be inserted—

""Assistant Commissioner of Police of the Metropolis" includes the Deputy Commissioner of Police of the Metropolis;".

(13) In Part VII of that Act, before section 134 there shall be inserted—

Meaning of "prevention" and "detection".

"133A Section 81(5) of the Regulation of Investigatory Powers Act 2000 (meaning of "prevention" and "detection") shall apply for the purposes of this Act as it applies for the purposes of the provisions of that Act not contained in Chapter I of Part I."

Textual Amendments

F274 Sch. 4 para. 8(4)(c) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 174, 178, **Sch. 17 Pt. 2**; S.I. 2006/378, **art. 4(1)**, Sch. para. 13(hh) (subject to art. 4(2)-(7))

F275 Sch. 4 para. 8(5) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 174, 178, **Sch. 17 Pt. 2**; S.I. 2006/378, **art. 4(1)**, Sch. para. 13(hh) (subject to art. 4(2)-(7))

Marginal Citations

M123 1997 c. 50.

M124 1998 c. 42.

The Northern Ireland Act 1998 (c. 47)

9 In paragraph 17(b) of Schedule 2 to the [M125]Northern Ireland Act 1998 (excepted matters), for "the Interception of Communications Act 1985" there shall be substituted " Chapter I of Part I of the Regulation of Investigatory Powers Act 2000 ".

Marginal Citations

M125 1998 c. 47.

The Electronic Communications Act 2000 (c. 7)

10 In section 4(2) of the [M126]Electronic Communications Act 2000 (exception to rules restricting disclosure of information obtained under Part I of that Act), for the word "or" at the end of paragraph (e) there shall be substituted—

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"(ea) for the purposes of any proceedings before the tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000; or".

Marginal Citations
M126 2000 c. 7.

The Financial Services and Markets Act 2000 (c. 8)

11 In section 394(7) of the [M127]Financial Services and Markets Act 2000 (exclusion of material from material of the Authority to which a person must be allowed access), for paragraphs (a) and (b) there shall be substituted—

"(a) is material the disclosure of which for the purposes of or in connection with any legal proceedings is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000; or"

Marginal Citations
M127 2000 c. 8.

The Terrorism Act 2000 (c. 11)

12 (1) In section 9(2)(d) of the [M128]Terrorism Act 2000 (proceedings under the [M129]Human Rights Act 1998), for "8" there shall be substituted " 7 ".

(2) In each of paragraphs 6(3) and 7(5) of Schedule 3 to that Act (references to an organisation and representative in paragraphs 5 and 8 of that Schedule), for "paragraphs 5 and 8" there shall be substituted " paragraph 5 ".

Marginal Citations
M128 2000 c. 11.
M129 2000 c. 11.

SCHEDULE 5

Section 82.

REPEALS

Commencement Information
I13 Sch. 5 partly in force; Sch. 5 not in force at Royal Assent see s. 83(2); Sch. 5 in force for certain purposes at 25.9.2000 and Sch. 5 in force to the extent that it is not already in force at 2.10.2000 by S.I. 2000/2543, **arts. 2**, 3 (subject to transitional provisions in art. 6)

Chapter	Short title	Extent of repeal

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1975 c. 24.	The House of Commons Disqualification Act 1975.	In Part II of Schedule 1, the words "The Tribunal established under the Interception of Communications Act 1985", "The Tribunal established under the Security Service Act 1989", and "The Tribunal established under section 9 of the Intelligence Services Act 1994".
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Part II of Schedule 1, the words "The Tribunal established under the Interception of Communications Act 1985", "The Tribunal established under the Security Service Act 1989", and "The Tribunal established under section 9 of the Intelligence Services Act 1994".
1985 c. 56.	The Interception of Communications Act 1985.	Sections 1 to 10.
		Section 11(3) to (5).
		Schedule 1.
1989 c. 5.	The Security Service Act 1989.	Sections 4 and 5.
		Schedules 1 and 2.
1989 c. 6.	The Official Secrets Act 1989.	In Schedule 1, paragraph 3.
1990 c. 41.	The Courts and Legal Services Act 1990.	In Schedule 10, paragraphs 62 and 74.
1994 c. 13.	The Intelligence Services Act 1994.	In section 6(1)(b), the words "of his department".
		In section 7(5)(b), the words "of his department".
		Sections 8 and 9.
		In section 11(1), paragraph (b).
		Schedules 1 and 2.
1997 c. 50.	The Police Act 1997.	In section 93(6), paragraph (f) and the word "and" immediately preceding it.

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		In section 94(1), the word "or" at the end of paragraph (a). In section 94(2)(e), the words "or (g)" and "or, as the case may be, of the National Crime Squad". In section 94(4)— (a) the words "in his absence", in each place where they occur; and (b) paragraph (d) and the word "and" immediately preceding it. In section 97(6), the words from "(and paragraph 7" onwards. Sections 101 and 102. In section 104— (a) in subsection (1), paragraph (g); (b) in each of subsections (4), (5) and (6), paragraph (b) and the word "or" immediately preceding it; (c) in subsection (8), paragraph (b) and the word "and" immediately preceding it. In section 105(1)(a), sub-paragraph (iii) and the word "and" immediately preceding it. Section 106. Section 107(6). Schedule 7.
1997 c. 68.	The Special Immigration Appeals Commission Act 1997.	Section 5(7).
1998 c. 37.	The Crime and Disorder Act 1998.	Section 113(1) and (3).
2000 c. 11.	The Terrorism Act 2000.	In Schedule 3, paragraph 8.

Status:
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Changes to legislation:
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