

EXECUTIVE NOTE

THE REGULATION OF INVESTIGATORY POWERS (PRESCRIPTION OF OFFICES, ETC. AND SPECIFICATION OF PUBLIC AUTHORITIES) (SCOTLAND) ORDER 2010 (SSI 2010/350)

The above instrument is made in exercise of the powers conferred by sections 8(1), 8(4)(b), 9(3) and 28(4) of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). The instrument is subject to negative resolution procedure.

Policy Objective

Section 8 of RIP(S)A lists the public authorities within which prescribed persons are entitled to grant authorisations under section 6 (directed surveillance) and section 7 (covert human intelligence sources). The relevant public authorities are listed at section 8(3).

The use of RIP(S)A by public authorities is kept under regular review by Scottish Ministers. From time to time, it is necessary to make amendments to the list of public authorities, using the powers available at section 8(4). During the latest review, a number of matters came to light which are addressed by this Order and by the Regulation of Investigatory Powers (Scotland) Amendment Order 2010:

- the existing entries at section 8(3)(d), (e), (f) and (g) need to be removed (using the power at section 8(4)(b). Respectively, these bodies are the Common Services Agency for the Health Service, a health board, a special health board and a National Health Service trust;
- a new entry for the Common Services Agency for the Scottish Health Service needs to be added at section 8(3)(i) (using the power at section 8(4)(a) (this is the subject of a separate, affirmative instrument, the Regulation of Investigatory Powers (Scotland) Amendment Order 2010;

In addition, necessary changes were identified to the prescribed offices, ranks and positions within the relevant public authorities who may grant authorisations under sections 6 and 7 of RIP(S)A. At present such offices, ranks and positions are prescribed in the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000.

- the authorising officer within the Common Services Agency for the Scottish Health Service needs to be amended (using the power at section 8(1));
- the authorising officer within the Scottish Environment Protection Agency needs to be amended (using the power at section 8(1));
- the entry for ‘Chief Medical Officer and Public Health Directorate’ (part of the Scottish Administration) is to be removed from the Schedule.
- the offices, ranks and positions for the health bodies mentioned above are also being removed, as they are no longer relevant public authorities;
- the opportunity is also being taken to produce a new consolidated Order which takes account of the above and previous amendments made since RIPSAs came into force.

A fuller commentary on the listed changes is provided below.

National Health Service Bodies

There is a requirement to change the current authorising officer within the Common Services Agency for the Scottish Health Service from ‘Senior Investigator’ to ‘Head of Investigations’. Additionally, as all RIP(S)A authorisations in relation to the NHSScotland are now a matter for Counter Fraud Services, the need for the NHS bodies listed currently at RIP(S)A sections 8(e), (f) and (g) can be omitted. Accordingly, the corresponding entries for these bodies in the Order prescribing the offices, ranks and positions within relevant public authorities can also be omitted. This ensures that the list of public bodies able to authorise covert activity under RIP(S)A is up to date and in keeping with current practice.

It has also come to light during this review that the word ‘Scottish’ had been omitted from the entry at section 8(3)(d) i.e. the Common Services Agency for the Health Service should be a reference to the Common Services Agency for the Scottish Health Service. While there is no other body called ‘the Common Services Agency for the Health Service’, and while the Scottish Parliament, when passing the original Act, could only have intended to include a body within the Scottish Health Service, the opportunity is being taken to correct this matter in the interest of the avoidance of doubt. To achieve this, the current entry at section 8(3)(d) requires to be removed and a new entry listing the correctly named body added at section 8(3)(i).

The addition of the correctly named entry is provided for in The Regulation of Investigatory Powers (Scotland) Amendment Order 2010 and is subject to affirmative resolution procedure.

All other provisions described in this note are provided for in the Regulation of Investigatory Powers (Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010, which is subject to negative resolution procedure.

Scottish Environment Protection Agency (SEPA)

The Divisional Manager, Regional Scientist and Head of Policy Co-ordination no longer need to be listed as authorising officers for SEPA as these posts no longer exist in SEPA’s structure. These will, therefore, be removed, retaining the Director as authorising office within SEPA.

Chief Medical Officer and Public Health Directorate

Chief Medical Officer and Public Health Directorate is one of the bodies listed currently on the Schedule under the Scottish Administration. Consultation with this office has resulted in the need for the listing to be removed from the Schedule, thus reducing the number of offices able to authorise activity under RIP(S)A.

Consolidation

The original Order prescribing the offices, ranks and positions within relevant public bodies was the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000. This Order has been updated to take account of name changes, organisational restructuring and the removal of offices on a number of occasions. We are taking this opportunity to produce a consolidated, up to date Order, necessitating the

revocation of the Orders listed at Schedule 2 to The Regulation of Investigatory Powers (Offices, etc. and Prescription of Public Authorities) (Scotland) and Amendment Order 2010.

Consultation

As none of the provisions seek to take new powers, or to increase the powers currently available to any of the bodies affected, consultation was confined to the bodies affected.

Regulatory Impact Assessment

For the same reasons stated under the Consultation paragraph, no Regulatory Impact Assessment has been completed.

Financial Effects

This instrument has no additional financial effects on the Scottish Government, local government, any of the affected bodies or business.

Scottish Government Justice & Communities Directorate
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