

*Supersedes draft laid before Parliament on 29th January 2004 which has not been published. Draft Order laid before Parliament under section 19(3) of the Police Reform Act 2002 for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2004 No.**

**POLICE, ENGLAND AND WALES**

**The Independent Police Complaints  
Commission (Investigatory Powers) Order 2004**

*Made* - - - - *2004*  
*Coming into force* - - *1st April 2004*

The Secretary of State, in exercise of the powers conferred on him by section 19(1) and (2) of the Police Reform Act 2002<sup>(1)</sup> hereby makes the following Order, a draft of which has been laid before and approved by resolution of each House of Parliament:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Independent Police Complaints Commission (Investigatory Powers) Order 2004 and shall come into force on 1st April 2004.

(2) In this Order—

“the 1997 Act” means the Police Act 1997<sup>(2)</sup>;

“the 2000 Act” means the Regulation of Investigatory Powers Act 2000<sup>(3)</sup>.

**Modifications to the 1997 Act**

2.—(1) For the purposes of the carrying out of the functions of the Independent Police Complaints Commission, Part 3 of the 1997 Act shall have effect with the following modifications.

(2) In section 93 (authorisations to interfere with property etc.)—

(a) after subsection (3)(aa)<sup>(4)</sup> insert the following paragraph—

“(ab) if the authorising officer is within subsection (5)(ef), by a member of staff of the Independent Police Complaints Commission who has been designated under paragraph 19(2) of Schedule 3 to the Police Reform Act 2002,”;

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(1) 2002 c. 30.

(2) 1997 c. 50.

(3) 2000 c. 23.

(4) Section 93(3)(aa) was amended by section 82(1) of, and paragraph 8(2)(b) of Schedule 4 to, the 2000 Act.

- (b) after subsection (5)(ee)(5) insert the following paragraph—
  - “(ef) the Chairman of the Independent Police Complaints Commission;”;
- (c) in subsection (6)(e) after the words “in relation to” insert the words “the Chairman of the Independent Police Complaints Commission or”.
- (3) In section 94 (authorisations given in absence of authorising officer)—
  - (a) in subsection (1)(b)(6) after the words “paragraph (a), (c), (d)” insert “, (ef)”;
  - (b) after subsection (2)(dd)(7) insert the following paragraph—
    - “(de) where the authorising person is within paragraph (ef) of that subsection, by any other member of the Independent Police Complaints Commission;”;
  - (c) after subsection (4)(c)(8) insert the following paragraph—
    - “(d) in the case of an authorising officer within paragraph (ef) of section 93(5), means a person appointed as deputy chairman of the Independent Police Complaints Commission under paragraph 3(1) of Schedule 2 to the Police Reform Act 2002.”.
- (4) In section 95(7) (authorisations: form and duration etc.) after the words “paragraph (a), (c), (d),” insert “(ef),”.
- (5) In section 105(3) (appeals by authorising officer: supplementary) after the words “paragraph (a), (c), (d),” insert “(ef),”.
- (6) In section 107(4)(9) (supplementary provisions relating to Commissioners) after paragraph (a) insert the following paragraph—
  - “(aa) the functions of the Independent Police Complaints Commission.”.

### **Modifications to the 2000 Act**

- 3.—(1)** For the purposes of the carrying out of the functions of the Independent Police Complaints Commission, Parts 2 and 4 of the 2000 Act shall have effect with the following modifications.
- (2) After section 32(6)(j) (authorisation of intrusive surveillance) insert the following paragraph—
    - “(ja) the Chairman of the Independent Police Complaints Commission;”.
  - (3) In section 33 (rules for grant of authorisations)—
    - (a) after subsection (1) insert the following subsection—
      - “(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 Independent Police Complaints Commission shall not grant an authorisation under that section except on an application made by a member of staff of the Commission who has been designated under paragraph 19(2) of Schedule 3 to the Police Reform Act 2002.”;
    - (b) after subsection (3) insert the following subsection—
      - “(3A) A person who is a senior authorising officer by reference to the Independent Police Complaints Commission shall not grant an authorisation for the carrying out of intrusive surveillance except—

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(5) Section 93(5)(ee) was inserted by section 75(6)(a) of the 2000 Act.  
 (6) Section 94(1)(b) was amended by section 82(1) of, and paragraph 8(3) of Schedule 4 to, the 2000 Act.  
 (7) Section 94(2)(dd) was inserted by section 82(1) of, and paragraph 8(4)(a) of Schedule 4 to, the 2000 Act.  
 (8) Section 94(4)(c) was amended by section 82(2) of, and Schedule 5 to, the 2000 Act.  
 (9) Section 107(4) was amended by article 3 of, and paragraph 2(5)(c) of Schedule 6 to, the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999 (S.I. 1999/1747), and by section 82(1) of, and paragraph 8(10)(b) of Schedule 4 to, the 2000 Act.

- (a) on an application made by a member of staff of the Commission who has been designated under paragraph 19(2) of Schedule 3 to the Police Reform Act 2002; 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 England and Wales.”;
- (c) in subsection (5)(a) after the words “National Crime Squad,” insert “or who is a member of staff of the Independent Police Complaints Commission.”
- (4) In section 34 (grant of authorisations in the senior officer’s absence)—
  - (a) in subsection (1)(a) after the words “National Crime Squad,” insert “or by a member of staff of the Independent Police Complaints Commission who has been designated under paragraph 19(2) of Schedule 3 to the Police Reform Act 2002”;
  - (b) in subsection (2)(a) after the words “Squad in question” insert “or the Independent Police Complaints Commission”;
  - (c) after subsection (4)(m)(10) insert the following paragraph—
    - “(n) a person is entitled to act for the Chairman of the Independent Police Complaints Commission if he is any other member of the Independent Police Complaints Commission.”;
  - (d) after subsection (6)(c) insert the following paragraph—
    - “(d) in relation to the Chairman of the Independent Police Complaints Commission, means a person appointed as deputy chairman of the Independent Police Complaints Commission under paragraph 3(1) of Schedule 2 to the Police Reform Act 2002.”.
- (5) In section 35(10)(a) (notification of authorisations for intrusive surveillance) after “a police force,” insert “the Independent Police Complaints Commission.”
- (6) In section 36 (approval required for authorisations to take effect)—
  - (a) after subsection (1)(a) insert the following paragraph—
    - “(aa) a member of staff of the Independent Police Complaints Commission who has been designated under paragraph 19(2) of Schedule 3 to the Police Reform Act 2002;”;
  - (b) after subsection (6)(b) insert the following paragraph—
    - “(ba) where the authorisation was granted by the Chairman of the Independent Police Complaints Commission, by the designated deputy of the Chairman of the Independent Police Complaints Commission or by another member of that Commission entitled to act for that Chairman by virtue of section 34(4)(m), that Chairman;”.
- (7) After section 37(1)(a) (quashing of police and customs authorisations etc.) insert the following paragraph—
  - “(aa) a member of staff of the Independent Police Complaints Commission who has been designated under paragraph 19(2) of Schedule 3 to the Police Reform Act 2002;”.
- (8) After section 40(a) (information to be provided to Surveillance Commissioners) insert the following paragraph—
  - “(aa) every member and every employee of the Independent Police Complaints Commission.”.

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(10) Section 34(4)(m) was inserted by section 199(5)(c) of the Enterprise Act 2002 (c. 40).

- (9) After section 45(6)(c) (cancellation of authorisation) insert the following paragraph—  
“(ca) in relation to the Chairman of the Independent Police Complaints Commission, to his designated deputy;”.
- (10) After section 65(6)(c) (the Tribunal) insert the following paragraph—  
“(ca) the Independent Police Complaints Commission;”.
- (11) After section 68(7)(d) (Tribunal procedure) insert the following paragraph—  
“(da) every member and every employee of the Independent Police Complaints Commission;”.
- (12) After paragraph 4 of Schedule 1 (authorisation of surveillance and covert human intelligence sources: relevant public authorities for the purposes of sections 28 and 29) insert the following paragraph—  
“**4A.** The Independent Police Complaints Commission.”.

#### **Authorisation of surveillance and human intelligence sources: persons entitled to grant authorisations**

4.—(1) The offices and positions of member, Regional Director, Director of Investigations and Deputy Director of Investigations of the Independent Police Complaints Commission are hereby prescribed for the purposes of section 30(1) of the 2000 Act (persons entitled to grant authorisations under sections 28 and 29) as if prescribed by an order under that section.

(2) An individual holding an office or position mentioned in paragraph (1) may not grant an authorisation unless he believes it is necessary on the grounds set out in section 28(3)(b) or 29(3)(b) of the 2000 Act (authorisation necessary for the purpose of preventing or detecting crime or of preventing disorder).

#### **Urgent cases**

5.—(1) The additional position of Senior Investigating Officer of the Independent Police Complaints Commission is hereby prescribed for the purposes of section 30(1) of the 2000 Act, for the cases described in paragraph (2) as if prescribed by an order under that section.

(2) An individual prescribed by virtue of paragraph (1) may grant an authorisation only where it is not reasonably practicable having regard to the urgency of the case for the application to be considered by an individual holding an office or position prescribed by article 4(1).

Home Office  
2004

Minister of State

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order gives to the Independent Police Complaints Commission (“the IPCC”), its officers and employees powers under Part 3 of the Police Act 1997 (“the 1997 Act”) and Parts 2 and 4 of the Regulation of Investigatory Powers Act 2000 (“the 2000 Act”) equivalent to those exercisable by the police.

Article 2 modifies the 1997 Act. Article 2(2) allows the chairman of the IPCC to authorise interference with property and action in respect of wireless telegraphy on the application of a member of the investigative staff of the IPCC.

Article 2(3) has the effect that if neither the chairman nor a deputy chairman of the IPCC can consider an application for an authorisation, then any other member of the IPCC may do so.

Article 2(4) has the effect that a deputy chairman of the IPCC may renew or cancel an authorisation.

Article 2(5) gives a deputy chairman of the IPCC the power to appeal against a decision by the Chief Surveillance Commissioner to refuse or quash an authorisation.

Article 2(6) allows the Prime Minister to exclude matters from a report of the Chief Surveillance Commissioner before it is laid before Parliament if those matters would prejudice the discharge of the IPCC’s functions.

Article 3 modifies the 2000 Act. Article 3(2) adds the chairman of the IPCC to the list of senior authorising officers who can grant an authorisation for the carrying out of intrusive surveillance.

Article 3(3) provides that a member or senior employee of the IPCC can grant an authorisation only on the application of a member of the investigative staff of the IPCC. Article 3(3)(c) allows authorisations under Part 3 of the 1997 Act and under Part 2 of the 2000 Act to be combined in a single authorisation.

Article 3(4) provides that in urgent cases if it is not practicable for the chairman or a deputy chairman of the IPCC to consider an application for an authorisation for the carrying out of intrusive surveillance, then any other member of the IPCC can do so.

Article 3(5) provides that if the chairman of the IPCC (or his deputy) grants or cancels an authorisation, he must give notice to an ordinary Surveillance Commissioner.

Article 3(6)(a) provides that the approval of an ordinary Surveillance Commissioner is required to give effect to an authorisation which was granted by a member of the IPCC. Article 3(6)(b) provides that if the Surveillance Commissioner decides not to approve such an authorisation, he must make a report to the chairman of the IPCC.

Article 3(7) gives an ordinary Surveillance Commissioner power to renew or cancel an authorisation which was granted by a member of the IPCC.

Article 3(8) imposes on every member of the IPCC and its staff a duty to provide such documents and information as are required by a Surveillance Commissioner.

Article 3(9) provides that the chairman and a deputy chairman of the IPCC can cancel each other’s authorisations. The chairman can also cancel an authorisation made by any other member of the IPCC.

Article 3(10) provides that any complaints about directed surveillance, intrusive surveillance, use of covert human intelligence sources, interference etc. with property or interference with wireless

telegraphy by a person holding any office, rank or position with the IPCC are subject to the jurisdiction of the Tribunal established by section 65 of the 2000 Act.

Article 3(11) imposes on every member of the IPCC and its staff a duty to provide such documents and information as are required by the Tribunal established by section 65 of the 2000 Act.

Article 3(12) prescribes the IPCC as a “relevant authority” for the purposes of sections 28 and 29 of the 2000 Act. This has the effect that individuals who hold an office, rank or position with the IPCC can be prescribed as persons entitled to grant authorisations of directed surveillance and covert human intelligence sources.

Article 4(1) prescribes the IPCC’s Commissioners, its Regional Directors, its Director of Investigations and its Deputy Director of Investigations as persons entitled to grant authorisations of directed surveillance and covert human intelligence sources. Article 4(2) imposes the restriction that authorisations can be granted by such a person only if he or she believes that it is necessary for the purpose of preventing or detecting crime or of preventing disorder.

Article 5 provides that in urgent cases where the IPCC’s Commissioners, its Regional Directors, its Director of Investigations and its Deputy Director of Investigations are not available to authorise the use of directed surveillance and covert human intelligence sources, any Senior Investigating Officer of the IPCC can grant that authorisation.