

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Surveillance and Covert Human Intelligence Sources

Introductory

180. This Part of the Act creates a system of authorisations for various types of surveillance and the conduct and use of covert human intelligence sources. In common with other Parts of the Act, the provisions themselves do not impose a requirement on public authorities to seek or obtain an authorisation where, under the Act, one is available (see section 80). Nevertheless, the consequences of not obtaining an authorisation under this Part may be, where there is an interference by a public authority with Article 8 rights and there is no other source of authority, that the action is unlawful by virtue of section 6 of the Human Rights Act 1998.

Section 26: Conduct to which Part II applies

181. This section describes and defines the conduct that can be authorised under this Part of the Act. Three types of activity are covered: "directed surveillance", "intrusive surveillance" and the conduct and use of covert human intelligence sources.
182. "Directed surveillance" is defined in *subsection (2)* as covert surveillance that is undertaken in relation to a specific investigation or a specific operation which 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 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. By *subsection (9)*, surveillance will be covert where it is carried out in a manner calculated to ensure that the person or persons subject to the surveillance are unaware that it is or may be taking place. Directed surveillance may also include the interception of communications where there is no interception warrant and where the communication is sent by or is intended for a person who has consented to the interception (*section 48(4)*).
183. "Intrusive surveillance" is defined in *subsections (3) to (5)* as covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle. This kind of surveillance may take place by means either of a person or device located inside residential premises or a private vehicle of the person who is subject to the surveillance or by means of a device placed outside which consistently provides a product of equivalent quality and detail as a product which would be obtained from a device located inside.
184. For these purposes, a private vehicle is one used primarily for private purposes, for example for family, leisure or domestic purposes (*section 48(1)*). *Subsection (4)*

provides that surveillance is not intrusive when the device is one that only provides information about the location of the vehicle (eg a tracking device).

185. *Subsection (6)* provides that surveillance carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use of a television receiver is neither directed nor intrusive.
186. *Subsection (8)* defines a "covert human intelligence source".
187. *Subsection (10)* defines "private information", in relation to a person, as including any information relating to his private or family life.

Authorisation of surveillance and human intelligence sources

Section 27: Lawful surveillance etc

188. This section provides that all conduct defined in section 26 will be lawful, provided it is carried out in accordance with the authorisation to which it relates. Authorised conduct may cover any action taken either in the UK or abroad.
189. Furthermore, there will be no civil liability arising out of conduct that is incidental to the authorised conduct. However, this is only the case where the incidental conduct should not have been separately authorised either under this Act or under existing legislation.

Section 28, 29 and 30: Authorisation of directed surveillance; Authorisation of covert human intelligence sources; and Persons entitled to grant authorisations under sections 28 and 29

190. These sections deal with the scheme of authorisations for directed surveillance and the conduct and use of covert human intelligence sources.
191. *Section 30* provides that the persons entitled to grant such authorisations will be such persons within the relevant public authorities that are designated by order of the Secretary of State. In this respect, the relevant public authorities are specified in Parts I and II of Schedule 1. *Subsections (5) and (7)* allow the Secretary of State to add, remove, or move public authorities between Parts I and II of the Schedule. Adding authorities to the Schedule and moving an authority from Part II to Part I of the Schedule is subject to affirmative resolution.
192. *Subsection (2)* provides that where an authorisation for directed surveillance or the use or conduct of a covert human intelligence source is combined with a Secretary of State authorisation for intrusive surveillance, the combined authorisation must be issued by the Secretary of State.
193. Police and Customs authorisations may only be granted on an application from within the force or authority in question (see section 33(1) and (2)).
194. *Section 28 and 29* provide that authorisations cannot be granted unless specific criteria are satisfied, namely, that the person granting the authorisation believes that:
 - the authorisation is necessary on specific grounds; and
 - the authorised activity is proportionate to what is sought to be achieved by it.
195. The specific grounds are that the authorisation is necessary:
 - in the interests of national security;
 - for the purpose of preventing or detecting crime or preventing disorder;
 - in the interests of the economic well-being of the UK;
 - in the interests of public safety;

*These notes refer to the Regulation of Investigatory Powers
Act 2000 (c.23) which received Royal Assent on 28 July 2000*

- for the purpose of protecting public health;
 - for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
 - for other purposes which may be specified by order of the Secretary of State.
196. In addition, there are two further criteria in relation to covert human intelligence sources: namely that specific arrangements exist to ensure that, amongst other things, the source is independently managed and supervised, that records are kept of the use made of the source, that the source's identity is protected from those who do not need to know it, and that arrangements also exist to satisfy such other requirements as may be imposed by order made by the Secretary of State. The responsibility for the management and supervision of a source falls to specified individuals within the organisation benefiting from the use of the source. As there may be cases where a source carries out activities for more than one organisation, it is provided that only one organisation will be identified as having responsibility for each requirement in relation to such arrangements and record-keeping.
197. [Section 29\(7\)](#) provides that the Secretary of State may prohibit, by order, certain conduct/uses of covert sources altogether and enables him, in other specific cases, to impose additional requirements which must be satisfied before an authorisation may be granted.
198. *Subsection (3)* of section 30 provides that the Secretary of State may impose, by order, restrictions on the types of authorisations granted and on the circumstances or purpose for which such authorisations may be granted.
199. [Sections 28\(4\)](#) and [29\(4\)](#) set out the conduct that is authorised by the authorisation. Broadly speaking, it covers any conduct that occurs whilst carrying out the specified surveillance or is comprised in the activities involving the specified conduct or use of a covert human intelligence source, provided it is carried out or takes place in the manner and for the purposes described.

Section 31: Orders under section 30 for Northern Ireland

200. [Section 31](#) provides for the Office of the First Minister and Deputy First Minister, to be able to make an order specifying which authorities, with devolved functions in Northern Ireland, can lawfully authorise directed surveillance and the conduct and the use of covert human intelligence sources.