



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART II

#### SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES

##### *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 <sup>M1</sup>Intelligence Services Act 1994 (warrants for the intelligence services); or
  - (c) an enactment contained in Part III of the <sup>M2</sup>Police Act 1997 (powers of the police and of customs officers).

*Status: Point in time view as at 20/06/2003.*

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#### Marginal Citations

M1 1994 c. 13.

M2 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);

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

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- (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—
- (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)**

C1 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;

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- (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.
- (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;
  - <sup>F1</sup>(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 <sup>M3</sup>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 <sup>M4</sup>Interpretation Act (Northern Ireland) 1954).

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- (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—
- (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 <sup>M5</sup>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

**F1** S. 31(2)(b) repealed (15.11.2001) by *S.I. 2001/3686, art. 6(17)(a)* (with *art. 8*)

#### Marginal Citations

**M3** *S.I. 1979/1573 (N.I. 12).*

**M4** *1954 c. 33 (N.I.).*

**M5** *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.
- [<sup>F2</sup>(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).]

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- (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.
- (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 <sup>M6</sup>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 <sup>M7</sup>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 Royal Navy Regulating Branch;
  - (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;
  - (k) the Director General of the National Criminal Intelligence Service;
  - (l) the Director General of the National Crime Squad and any person holding the rank of assistant chief constable in that Squad who is designated for the purposes of this paragraph by that Director General; and <sup>F3</sup> . . .
  - (m) any customs officer designated for the purposes of this paragraph by the Commissioners of Customs and Excise [<sup>F4</sup>]; and
  - (n) the chairman of the OFT.]

#### Textual Amendments

- F2** S. 32(3A) inserted (20.6.2003) by 2002 c. 40, ss. 199(2)(a), 27; S.I. 2003/1397, art. 2(1), Sch.
- F3** Word in s. 32(6)(l) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)
- F4** S. 32(6)(n) and word preceding it inserted (20.6.2003) by 2002 c. 40, ss. 199(2)(b), 279; S.I. 2003/1397, art. 2(1), Sch.

#### Modifications etc. (not altering text)

- C2** 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)

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- C3** 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)
- C4** S. 32(6)(m) 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\(2\)\(b\)](#); S.I. 2005/1126, [art. 2\(2\)\(d\)](#)

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**Marginal Citations**

- M6** 1996 c. 16.  
**M7** 1967 c. 77.



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