



Regulation of Investigatory Powers Act 2000

2000 CHAPTER 23

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

73 Conduct in relation to wireless telegraphy

- (1) Section 5 of the Wireless Telegraphy Act 1949 (misleading messages and interception and disclosure of wireless telegraphy messages) shall become subsection (1) of that section.
- (2) In paragraph (b) of that subsection—
 - (a) for the words from “under the authority of” to “servant of the Crown,” there shall be substituted “under the authority of a designated person”; and
 - (b) in sub-paragraph (i), for the words from “which neither” to the end of the sub-paragraph there shall be substituted “of which neither the person using the apparatus nor a person on whose behalf he is acting is an intended recipient,”.
- (3) In that section, after that subsection there shall be inserted—
 - “(2) The conduct in relation to which a designated person may give a separate authority for the purposes of this section shall not, except where he believes the conduct to be necessary on grounds falling within subsection (5) of this section, include—
 - (a) any conduct which, if engaged in without lawful authority, constitutes an offence under section 1(1) or (2) of the Regulation of Investigatory Powers Act 2000;
 - (b) any conduct which, if engaged in without lawful authority, is actionable under section 1(3) of that Act;

Status: This is the original version (as it was originally enacted).

- (c) any conduct which is capable of being authorised by an authorisation or notice granted by any person under Chapter II of Part I of that Act (communications data);
 - (d) any conduct which is capable of being authorised by an authorisation granted by any person under Part II of that Act (surveillance etc.).
- (3) A designated person shall not exercise his power to give a separate authority for the purposes of this section except where he believes—
 - (a) that the giving of his authority is necessary on grounds falling within subsection (4) or (5) of this section; and
 - (b) that the conduct authorised by him is proportionate to what is sought to be achieved by that conduct.
- (4) A separate authority for the purposes of this section 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 (within the meaning of the Regulation of Investigatory Powers Act 2000) 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 regulations made by the Secretary of State.
- (5) A separate authority for the purposes of this section is necessary on grounds falling within this subsection if it is not necessary on grounds falling within subsection (4)(a) or (c) to (g) but is necessary for purposes connected with—
 - (a) the issue of licences under this Act;
 - (b) the prevention or detection of anything which constitutes interference with wireless telegraphy; or
 - (c) the enforcement of any enactment contained in this Act or of any enactment not so contained that relates to such interference.
- (6) The matters to be taken into account in considering whether the requirements of subsection (3) of this section are satisfied in the case of the giving of any separate authority for the purposes of this section shall include whether what it is thought necessary to achieve by the authorised conduct could reasonably be achieved by other means.
- (7) A separate authority for the purposes of this section must be in writing and under the hand of—
 - (a) the Secretary of State;
 - (b) one of the Commissioners of Customs and Excise; or
 - (c) a person not falling within paragraph (a) or (b) who is designated for the purposes of this subsection by regulations made by the Secretary of State.

- (8) A separate authority for the purposes of this section may be general or specific and may be given—
- (a) to such person or persons, or description of persons,
 - (b) for such period, and
 - (c) subject to such restrictions and limitations,
- as the designated person thinks fit.
- (9) No regulations shall be made under subsection (4)(g) unless a draft of them has first been laid before Parliament and approved by a resolution of each House.
- (10) For the purposes of this section the question whether conduct is capable of being authorised under Chapter II of Part I of the Regulation of Investigatory Powers Act 2000 or under Part II of that Act shall be determined without reference—
- (a) to whether the person whose conduct it is is a person on whom any power or duty is or may be conferred or imposed by or under Chapter II of Part I or Part II of that Act; or
 - (b) to whether there are grounds for believing that the requirements for the grant of an authorisation or the giving of a notice under Chapter II of Part I or Part II of that Act are satisfied.
- (11) References in this section to a separate authority for the purposes of this section are references to any authority for the purposes of this section given otherwise than by way of the issue or renewal of a warrant, authorisation or notice under Part I or II of the Regulation of Investigatory Powers Act 2000.
- (12) In this section “designated person” means—
- (a) the Secretary of State;
 - (b) the Commissioners of Customs and Excise; or
 - (c) any other person designated for the purposes of this section by regulations made by the Secretary of State.”
- (4) In section 16(2) of that Act (regulations and orders), after “the said powers” there shall be inserted “, other than one containing regulations a draft of which has been approved for the purposes of section 5(9),”.