

CRIME (INTERNATIONAL CO-OPERATION) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Miscellaneous

Section 81: Inspection of Information Systems

147. This section extends the functions of the Information Commissioner under Part VI of the Data Protection Act 1998 (the “1998 Act”). It allows the Information Commissioner to inspect personal data recorded in the UK sections of three European information systems without a warrant. These information systems are the Schengen Information System (“SIS”), the Europol Information System (“EIS”) and the Customs Information System (“CIS”). The requirement for an independent power of supervision arises from the Conventions referred to in subsection (7) of the section, establishing the SIS, EIS and CIS. These Conventions require the supervisory authority to have free access to the national sections of the systems. At present the Commissioner is only able to enter premises to carry out inspections of the EIS either by agreement with the relevant UK body, the National Criminal Intelligence Service (“NCIS”), or on production of a warrant. The UK is not yet connected to the SIS or the CIS, but similar arrangements would apply once connection has been established.
148. As required by the Conventions, the purpose of the Information Commissioner’s inspections will be to ensure that the processing of personal data in the national sections of these systems is in compliance with processing requirements under the 1998 Act. The Information Commissioner will be required to notify the relevant data controller of his intention to inspect the systems (other than in cases of urgency), but a person obstructing the Information Commissioner in the course of his inspection or failing without reasonable excuse to give him any reasonable assistance will be guilty of an offence. The penalties for the offence are as established by section 60 of the 1998 Act, which provides that a person guilty of an offence in relation to the powers of the Information Commissioner is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). However, if required for the purposes of safeguarding national security, the additional powers attributed to the Information Commissioner under this section in respect of personal data in the systems will not apply.