
STATUTORY INSTRUMENTS

2017 No. 859

**The Investigatory Powers Act 2016
(Commencement No. 3 and Transitory, Transitional
and Saving Provisions) Regulations 2017**

PART 3

Surveillance Commissioners: transitory and saving provisions

Transitory and saving provisions regarding the Surveillance Commissioners

7.—(1) Where a person holds office as a Commissioner appointed under section 91(1)(b) of the 1997 Act (the Commissioners) immediately before the coming into force of section 240 of the 2016 Act (abolition of existing oversight bodies), section 91(1) to (4) and (6) to (10)(1) of the 1997 Act and sections 40(2) (information to be provided to Surveillance Commissioners) and 63(3) and (4) (Assistant Surveillance Commissioners) of RIPA continue to have effect in relation to such a person until—

- (a) 31st December 2017, or
 - (b) the day on which the person ceases to be a Commissioner in accordance with section 91 of the 1997 Act, if earlier.
- (2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.
- (3) In continuing to have effect by virtue of paragraph (1)—
- (a) section 91 of the 1997 Act is to be read as if in subsection (9) and (9A) for “the Chief Commissioner” there were substituted “the Investigatory Powers Commissioner”, and
 - (b) section 63 of RIPA is to be read as if—
 - (i) for subsection (3) there were substituted—

“(3) The Investigatory Powers Commissioner may require a Commissioner appointed under section 91(1)(b) of the Police Act 1997 to provide the Investigatory Powers Commissioner with assistance in carrying out functions under section 229(3) (e), (f) and (h) of the Investigatory Powers Act 2016 (main oversight functions).”, and
 - (ii) in subsection (4), for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner”.

(1) Section 91 was amended by paragraph 8(1) of Schedule 4 to RIPA, paragraph 22(2) of Schedule 4 to the Insolvency Act 2000 (c. 39), paragraph 27 of Schedule 17 to the Constitutional Reform Act 2005, paragraph 11(2) of Schedule 16 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 150(2) and (3) to the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), S.I. 1999/1747, S.I. 2004/1941 and S.I. 2009/1941.

(2) Section 40 was amended by paragraph 16 of Schedule 12 to the Serious Crime Act 2007, paragraph 88 of Schedule 8 and paragraph 12 of Schedule 21 to the Crime and Courts Act 2013 and S.I. 2014/892.

(4) In their application to persons who continue to hold office by virtue of paragraph (1), references to a Judicial Commissioner in the following enactments are to be read as including a reference to a Commissioner appointed under section 91(1)(b) of the 1997 Act—

- (a) sections 96 (notification of authorisations etc)(3), 97 (authorisations requiring approval)(4) and 103 to 105 (quashing of authorisations and appeals against decisions)(5) of the 1997 Act;
- (b) sections 35 to 39 (authorisations)(6), 54 (tipping-off)(7), 55 (general duties of specified authorities)(8), 68 (tribunal procedure)(9) and 72 (effect of codes of practice)(10) of RIPA, and
- (c) articles 4 to 6 (authorisations and appeals against decisions) of the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013(11).

Transitory and saving provisions regarding Assistant Surveillance Commissioners

8.—(1) Where a person holds office as an Assistant Surveillance Commissioner appointed under section 63(1) of RIPA immediately before the coming into force of section 240 of the 2016 Act, section 63 of RIPA and section 91(3), (4), and (6) to (9) of the 1997 Act continue to have effect in relation to such a person until—

- (a) 30th April 2018, or
 - (b) the day on which the person ceases to be a Commissioner in accordance with section 91 of the 1997 Act, if earlier.
- (2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.
- (3) So far as continuing to have effect by virtue of paragraph (1)—
- (a) section 91(9) of the 1997 Act is to be read as if for “the Chief Commissioner” there were substituted “the Investigatory Powers Commissioner”, and
 - (b) section 63 of RIPA is to be read as if—

(i) for subsection (3) there were substituted—

“(3) The Investigatory Powers Commissioner may require an Assistant Surveillance Commissioner to provide the Investigatory Powers Commissioner with assistance in carrying out functions under section 229(3)(e) to (h) of the Investigatory Powers Act 2016.”, and

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- (3) Section 96 was amended by section 233(2)(a),(b) and (c) of the 2016 Act.
 - (4) Section 97 was amended by paragraph 8(7) of Schedule 4 and by Schedule 5 to RIPA, paragraph 100 of Schedule 4 to the Serious Organised Crime and Police Act 2005 and section 233(2)(c) and (h) of the 2016 Act.
 - (5) Section 103 was amended by paragraph 8 of Schedule 4 to RIPA and section 233(2)(a) to (d) and (h) of, and paragraph 72 of Schedule 10 to, the 2016 Act. Section 104 was amended by Schedule 5 to RIPA and section 233(2)(a), (e) and (f) of the 2016 Act. Section 105 was amended by paragraph 8(9) of Schedule 4 and by Schedule 5 to RIPA, paragraph 101 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraph 14(5) of Schedule 7 to the Police and Fire Reform (Scotland) Act 2012 (asp 8), section 233(2)(a) and (g) of the 2016 Act and [S.I. 2013/602](#).
 - (6) Section 35 was amended by paragraph 139 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraph 13 of Schedule 12 to the Serious Crime Act 2007, paragraph 85 of Schedule 8 and paragraph 9 of Schedule 21 to the Crime and Courts Act 2013, sections 233(3)(a) to (c) of the 2016 Act and [S.I. 2014/892](#).
 - (7) Section 54 was amended by paragraphs 131 and 147 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraphs 5 and 21 of Schedule 12 to the Serious Crime Act 2007, paragraphs 77 and 92 of Schedule 8 to the Crime and Courts Act 2013, section 233(4)(b) of the 2016 Act, and [S.I. 2007/1098](#) and [2013/602](#).
 - (8) Section 55 was amended by paragraphs 5 and 22 of Schedule 12 to the Serious Crime Act 2007, paragraphs 77 and 93(1) of Schedule 8 to the Crime and Courts Act 2013, section 233(4)(c) and (d) of the 2016 Act, and [S.I. 2007/1098](#) and [2013/602](#).
 - (9) Section 68 was amended by paragraphs 131 and 152 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraphs 77 and 97 of Schedule 8 to the Crime and Courts Act 2013, section 242(3), 243(3), (4), (5) and (6) of the 2016 Act, and [S.I. 2007/1098](#) and [2013/602](#).
 - (10) Section 72 was amended by paragraph 82(3) of Schedule 10 to the 2016 Act and [S.I. 2014/2042](#).
 - (11) [S.I. 2013/2788](#). Article 4 was amended by section 233(6)(b) of the 2016 Act. Article 6 was amended by section 233(6)(c) and (d) of the 2016 Act.

- (ii) in subsection (4) for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner.”

(4) In their application to persons who continue to hold office by virtue of paragraph (1), references to a Judicial Commissioner in sections 54(9)(**12**), 55(7)(**13**), 68(8)(**14**) and 72(4)(bb)(**15**) of RIPA are to be read as including a reference to an Assistant Surveillance Commissioner appointed under section 63(1) of RIPA.

Transitory and saving provisions regarding the Scottish Surveillance Commissioners

9.—(1) Where a person holds office as a Surveillance Commissioner appointed under section 2(1)(b) of RIPSAs (conduct to which this Act applies)(**16**) immediately before the coming into force of section 240 of the 2016 Act, sections 2(1) to (4) and (6) to (9), 3(3) and (4) (Assistant Surveillance Commissioners) and 18 (information to be provided to Surveillance Commissioners)(**17**) of RIPSAs continue to have effect in relation to such a person until—

- (a) 31st December 2017, or
(b) the day on which the person ceases to be a Surveillance Commissioner in accordance with section 2 of RIPSAs, if earlier.

(2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.

(3) So far as continuing to have effect by virtue of paragraph (1)—

- (a) section 2 of RIPSAs is to be read as if in subsection (9), for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner”, and
(b) section 3 of RIPSAs is to be read as if—

(i) for subsection (3) there were substituted—

“(3) The Investigatory Powers Commissioner may require a Surveillance Commissioner appointed under section 2(1)(b) to provide the Investigatory Powers Commissioner with assistance in carrying out functions under section 229(3)(g) of the Act.”, and

(ii) in subsection (4), for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner”.

(4) In relation to persons who continue to hold office by virtue of paragraph (1), references to a Judicial Commissioner in sections 2, 13 to 17 (authorisations and appeals against decisions)(**18**) and 26 (effect of codes of practice)(**19**) of RIPSAs are to be read as including a reference to a Surveillance Commissioner appointed under section 2(1)(b) of RIPSAs.

(**12**) Section 54(9) was amended by section 233(4)(b) of the 2016 Act.

(**13**) Section 55(7) was amended by section 233(4)(c) of the 2016 Act.

(**14**) Section 68(8) was amended by section 243(6) of the 2016 Act.

(**15**) Section 72(4)(bb) was inserted by paragraph 82(2) of Schedule 10 to the 2016 Act, which is brought into force by these Regulations.

(**16**) Section 2 was amended by paragraph 73 of Schedule 9 to the Constitutional Reform Act 2005, paragraphs 85 and 86 of Schedule 10 to the 2016 Act and [S.I. 2009/1941](#).

(**17**) Section 18 was amended by paragraph 15(9) of Schedule 7 and Schedule 8 to the Police and Fire Reform (Scotland) Act 2012.

(**18**) Section 13 was amended by section 233(5)(a) to (c) of the 2016 Act. Section 14 was amended by section 233(5)(a) and (c) of the 2016 Act. Section 15 was amended by Schedule 8 to the Police and Fire Reform (Scotland) Act 2012 and section 233(5)(a), (b), and (d) of the 2016 Act. Section 16 was amended by paragraph 15(8) of Schedule 7 and by Schedule 8 to the Police and Fire Reform (Scotland) Act 2012 and section 233(5)(b) and (e) to (g) of , and paragraph 87 of Schedule 10 to, the 2016 Act. Section 17 was amended by section 255(5)(b) and (f) of the 2016 Act.

(**19**) Section 26 was amended by paragraph 15(13) of Schedule 7 to the Police and Fire Reform (Scotland) Act 2012 and paragraph 93 of Schedule 10 to the 2016 Act.

Transitory and saving provisions regarding the Scottish Assistant Surveillance Commissioners

10.—(1) Where a person holds office as an Assistant Surveillance Commissioner appointed under section 3 of RIPSAs immediately before the coming into force of section 240 of the 2016 Act, sections 2(3), (4), and (6) to (8) and 3 of RIPSAs continue to have effect in relation to such a person until—

- (a) 30th April 2018, or
- (b) the day on which the person ceases to be an Assistant Surveillance Commissioner in accordance with section 3 of RIPSAs, if earlier.

(2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.

(3) So far as continuing to have effect by virtue of paragraph (1), section 3 of RIPSAs is to be read as if—

- (a) for subsection (3) there were substituted—

“(3) The Investigatory Powers Commissioner may require a Surveillance Commissioner appointed under subsection (1) to provide the Investigatory Powers Commissioner with assistance in carrying out functions under section 229(3)(g) of the Act.”, and

- (b) in subsection (4), for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner”.

Decisions of the Chief Commissioner and other Surveillance Commissioners

11. The repeal of subsection (10) of section 91 of the 1997 Act by section 240(2)(c) of the 2016 Act does not affect any decision taken before the repeal of that subsection.