



# Regulation of Investigatory Powers (Scotland) Act 2000

## 2000 asp 11

### *Codes of practice*

#### **24 Issue and revision of codes of practice**

- (1) The Scottish Ministers shall issue one or more codes of practice relating to the exercise and performance of the powers and duties mentioned in subsection (2) below.
- (2) Those powers and duties are those (excluding any power to make subordinate legislation) that are conferred or imposed, by or under—
  - (a) this Act;
  - [<sup>F1</sup>(aa) Part 5 of the Investigatory Powers Act 2016 (equipment interference) so far as relating to the Police Service or the Police Investigations and Review Commissioner;] and
  - (b) Part III of the Police Act 1997 (c.50) (authorisation of interference with property or wireless telegraphy) insofar as relating to [<sup>F2</sup>the Police Service][<sup>F3</sup>or to the Police Investigations and Review Commissioner]<sup>F4</sup> ..., otherwise than on [<sup>F5</sup>the Judicial Commissioners] .
- (3) Before issuing a code of practice under subsection (1) above, the Scottish Ministers shall—
  - (a) prepare and publish a draft of that code; and
  - (b) consider any representations made to them about the draft,and the Scottish Ministers may incorporate in the code finally issued any modifications made by them to the draft after its publication.
- (4) The Scottish Ministers shall lay before the Scottish Parliament every draft code of practice prepared and published by them under this section.
- (5) A code of practice issued by the Scottish Ministers under this section shall not be brought into force except in accordance with an order made by them.
- (6) An order under subsection (5) above may contain such transitional provisions and savings as appear to the Scottish Ministers to be necessary or expedient in connection with the bringing into force of the code brought into force by that order.

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*Changes to legislation:* There are currently no known outstanding effects for the Regulation of Investigatory Powers (Scotland) Act 2000, Cross Heading: Codes of practice. (See end of Document for details)

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- (7) The Scottish Ministers may from time to time—
- (a) revise the whole or any part of a code issued under this section; and
  - (b) issue the revised code.
- (8) Subsections (3) to (6) above shall apply (with appropriate modifications) in relation to the issue of any revised code under this section as they apply in relation to the first issue of such a code.
- (9) The Scottish Ministers shall not make an order containing provision for any of the purposes of this section unless a draft of the order has been laid before, and approved by a resolution of the Parliament.

#### Textual Amendments

- F1** S. 24(2)(aa) inserted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), **Sch. 10 para. 69** (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(j)
- F2** Words in s. 24(2)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **Sch. 7 para. 15(12)(a)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F3** Words in s. 24(2)(b) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **Sch. 7 para. 15(12)(b)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F4** Words in s. 24(2)(b) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **Sch. 7 para. 15(12)(c)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F5** Words in s. 24(2) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), **Sch. 10 para. 92** (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(j)

## 25 Interim codes of practice

- (1) The Scottish Ministers may, notwithstanding the provisions of section 24 above, issue one or more interim codes of practice relating to the exercise and performance of the powers and duties mentioned in subsection (2) of that section.
- (2) An interim code issued under subsection (1) above shall have effect from its date of issue as if it were a code issued under subsection (1) of section 24 above which had been brought into force by an order under subsection (5) of that section.
- (3) An interim notice issued under subsection (1) above shall cease to have effect insofar as it is superseded by a code issued and brought into force under section 24 above.

## 26 Effect of codes of practice

- (1) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under section 24 or 25 above shall, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under that section.
- (2) A failure on the part of any person to comply with any provision of a code of practice for the time being in force under section 24 or 25 above shall not of itself render the person liable to any criminal or civil proceedings.

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- (3) A code of practice in force at any time under section 24 or 25 above shall be admissible in evidence in any criminal or civil proceedings.
- (4) If any provision of a code of practice issued under section 24 or 25 or revised under section 24(7) above appears to—
- (a) the court or tribunal conducting any civil or criminal proceedings;
  - (b) the [<sup>F6</sup>Investigatory Powers Commissioner] carrying out any of the functions of that Commissioner under this Act; or
  - (c) [<sup>F7</sup>a Judicial Commissioner (other than the Investigatory Powers Commissioner)] carrying out the functions of that Commissioner under this Act insofar as relating to [<sup>F8</sup>the Police Service][<sup>F9</sup>or the Police Investigations and Review Commissioner],

to be relevant to any question arising in the proceedings, or in connection with the exercise of that jurisdiction or the carrying out of those functions, in relation to a time when it was in force, that provision of the code shall be taken into account in determining that question.

#### Textual Amendments

- F6** Words in s. 26(4)(b) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), s. 272\(1\)](#), [Sch. 10 para. 93\(a\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(j)
- F7** Words in s. 26(4)(c) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\), s. 272\(1\)](#), [Sch. 10 para. 93\(b\)](#) (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2017/859, reg. 2(j)
- F8** Words in s. 26(4)(c) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 15\(13\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F9** Words in s. 26(4)(c) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 15\(13\)\(b\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

**Changes to legislation:**

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