

REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Surveillance Commissioners

Section 2: Surveillance Commissioners

15. This section provides for the appointment of a Chief Surveillance Commissioner and for the number of ordinary Surveillance Commissioners that the Scottish Ministers think fit to provide independent judicial oversight of the powers in the Act.
16. *Subsection (2)* provides that the Commissioners appointed under the Act must hold or have held high judicial office.
17. *Subsections (4) and (5)* provide that each Commissioner is to be appointed for a period of 3 years and that they may be re-appointed at the end of this term. *Subsections (6) and (7)* provide for the circumstances in which a Commissioner can be removed from office before the period of appointment expires. The Scottish Ministers may remove a Commissioner from office if the Commissioner becomes subject to a bankruptcy order, a disqualification order under the Company Directors Disqualification Act 1986 or is sentenced to imprisonment. The Scottish Parliament can also remove a Commissioner if it passes a resolution to that effect.
18. *Subsection (8)* provides that the Commissioners shall be paid for their duties under this Act by Scottish Ministers.
19. Under *subsection (9)* Scottish Ministers may provide the Commissioners with staff as Scottish Ministers see fit.
20. Under *subsection (10)* the decisions of the Chief Surveillance Commissioner or decisions of ordinary Surveillance Commissioners can not be appealed against, and cannot be questioned in court. An exception to this is appeals against the decisions of ordinary Surveillance Commissioners to the Chief Surveillance Commissioner under section 16 of the Act.

Section 3: Assistant Surveillance Commissioners

21. This section provides for the appointment of Assistant Surveillance Commissioners. Under *subsection (2)* no-one can be appointed in this capacity unless they hold or have held office as a sheriff, a Crown Court or Circuit judge in England and Wales, or a county court judge in Northern Ireland.
22. *Subsections (3) and (4)* outline the functions of the Assistant Surveillance Commissioners and ordinary Surveillance Commissioners in assisting the Chief Surveillance Commissioner. This will involve reviewing any matter and making a report of such a review to the Chief Surveillance Commissioner.

*These notes relate to the Regulation of Investigatory Powers (Scotland)
Act 2000 (asp 11) which received Royal Assent on 28 September 2000*

23. *Subsection (5)* provides that the terms of appointment of the Assistant Surveillance Commissioners will be the same as those for ordinary Surveillance Commissioners in section 2(5) to (8) of the Act (see paragraphs 16 and 17 above).

Section 4: Delegation of Commissioner's functions

24. This section provides that any of the functions of an ordinary Surveillance Commissioner or an Assistant Surveillance Commissioner under the Act may be performed by any authorised member of that Commissioner's staff.