

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

# REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Authorisation of surveillance and human intelligence sources*

***Sections 6, 7 and 8: Authorisation of directed surveillance; Authorisation of covert human intelligence sources; and Persons entitled to grant authorisations under sections 6 and 7***

27. These sections deal with the scheme of authorisations for directed surveillance and the conduct and use of covert human intelligence sources. Section 10 deals with the authorisation of intrusive surveillance (see paragraphs 38 to 40 below).
28. **Section 8** provides that such authorisations may be granted by such persons within the relevant public authorities holding such offices, ranks or positions as the Scottish Ministers prescribe. The “relevant authorities” are:
  - a police force;
  - the Scottish Administration;
  - a council constituted under section 2 of the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#);
  - the Common Services Agency for the Health Service;
  - a health board;
  - a special health board;
  - a National Health Service trust established under section 12A of the [National Health Service \(Scotland\) Act 1978 \(c.29\)](#);
  - the Scottish Environment Protection Agency.
29. Police authorisations may only be granted an application from within the force in question (see section 11(1) and paragraphs 41 to 45 below).
30. **Sections 6 and 7** provide that authorisations cannot be granted unless specific criteria are satisfied, namely, that the person granting the authorisation is satisfied that:
  - the authorisation is necessary on specific grounds; and
  - the authorised activity is proportionate to what is sought to be achieved by it.
31. The specific grounds are that the authorisation is necessary:
  - for the purpose of preventing or detecting crime or of preventing disorder;

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- in the interests of public safety; or
  - for the purpose of protecting public health.
32. [Section 7\(4\)](#) confers a power on the Scottish Ministers to make an order which imposes certain constraints on authorisations which may be made in relation to covert human intelligence sources. The order may prohibit the giving of authorisations in relation to certain descriptions of conduct or use of covert human intelligence sources. An order may also impose requirements, in addition to those provided for by [section 7\(2\)](#), that must be satisfied before an authorisation may be granted in relation to certain descriptions of the conduct or use of covert human intelligence sources.
33. There is a further criterion in relation to covert human intelligence sources, which is set out in [section 7\(6\)](#), namely that specific arrangements exist to ensure that, amongst other things, the source is independently managed and supervised and that records are kept of the use made of the source. The responsibility for such tasks falls to specified individuals within the organisation benefiting from the use of the source. As there may be cases where a source carries out activities for more than one organisation, it is provided that only one organisation will be identified as having responsibility for such arrangements and record-keeping.
34. *Subsection (2)* of [section 8](#) provides that Scottish Ministers may impose, by order, restrictions on the types of authorisations granted and on the circumstances or purpose for which such authorisations may be granted.
35. [Sections 6\(4\)](#) and [7\(5\)](#) set out the conduct that is authorised by the authorisation. Broadly speaking, it covers any conduct that occurs whilst carrying out the specified surveillance or is comprised in the activities involving the specified conduct or use of a covert human intelligence source, provided it is carried out or takes place in the manner and for the purposes described.