

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Criminal Justice

Section 107 – Authorisations to interfere with property etc.

521. This section amends section 93 of the Police Act 1997 (“the 1997 Act”) so as to make equivalent amendments in relation to authorisations for interference with property as those which have been made by virtue of section 106 in relation to authorisations for surveillance.
522. Subsection (2)(a) inserts subsections (3B) to (3E) into section 93 of the 1997 Act. Subsections (3B) to (3C) make provision about authorisations to interfere with property where there is a joint operation. Subsection (3E) defines a “joint operation” in the same way as it is defined for the purposes of the 2000 Act.
523. These provisions when read together ensure that in the case of a joint operation, the chief constable of a Scottish police force involved in the operation may authorise the persons mentioned in subsection (3D) to take action under section 93(1) of the 1997 Act. The persons mentioned in subsection (3D) are constables of any of the police forces involved in the joint operation (including action which might be outwith the area of operation of the constable’s own force) and if the SCDEA is involved in the operation, a police member of that Agency.
524. Similarly, where the SCDEA is involved in the joint operation, the Director General or the Deputy Director General of the SCDEA may authorise the persons mentioned in subsection (3D) to take action under section 93(1) to interfere with property.
525. As the 1997 Act extends to England and Wales also, subsection (3C)(a)(i) is designed to ensure that the amendments will only catch Scottish police forces.
526. Subsection (2)(b) amends subsection (5)(j) of section 93 of the 1997 Act so as to include the Deputy Director General of the SCDEA alongside the Director General as an “authorising officer” who may authorise interference with property. Subsection (2)(c) includes the rank of Deputy Director General of the SCDEA at section 93(6)(cc) of the Police Act. This is to define the area for which the Deputy Director General can approve authorisations for property interference.
527. Subsection (3)(c) inserts subsections (6) and (7) into section 94 (authorisation given in the absence of authorising officer) of the 1997 Act. These two new provisions read together make it clear that where the SCDEA is the lead Agency in a joint operation and the Director General or the Deputy Director General are not available then an application for an authorisation to interfere with property may be made to the chief constable of one of the forces involved in the joint operation.

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

528. Subsection (3)(a) and (b) make amendments consequential upon the insertion of new subsections (6) and (7) into section 94 of the 1997 Act.