

## **Executive Note**

### **The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Amendment Order 2006 SSI/2006/466**

The above instrument was made in exercise of powers conferred by sections 8(1) and 9(3) of the Regulation of Investigatory Powers (Scotland) Act 2000 (“the 2000 Act”). The instrument is subject to negative resolution procedure.

### **Policy Objectives**

The purpose of the instrument is to amend the Schedule to the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions)(Scotland) Order 2000 (“the 2000 Order”) to add a suitably qualified civilian member of staff to those in the Scottish Drug Enforcement Agency (SDEA) who can authorise directed surveillance and the use of covert human intelligence sources (CHIS).

The 2000 Order prescribes offices, ranks and positions under which individuals are designated persons for the purpose of granting authorisations for directed surveillance and the use of CHIS under sections 6 and 7 of the 2000 Act.

The ranks originally listed on the 2000 Order for the Scottish Police Service (a Superintendent in normal circumstances and Inspector in urgent cases) were decided upon after consultation with the Association of Chief Police Officers in Scotland (ACPOS) and reflect the need to strike a balance between ensuring that decisions which impinge on the privacy of individuals are taken at a sufficiently senior level, while not hindering operational efficiency.

The SDEA is structured in such a way that there are only two Superintendents within the Agency and it has reported that authorisations for the use of directed surveillance and CHIS can often be delayed due to the unavailability of a suitable official. In many cases, the quick deployment of such covert investigative techniques can be critical to the success or otherwise of investigations. While it is lawful for Inspectors to authorise in urgent cases, it is felt undesirable for this to become commonplace.

The civilian grade PO7 is deemed to be equivalent to that of Superintendent. Enabling such a senior civilian to authorise the use of directed surveillance and CHIS will provide a degree of separation and independence from individual operations on the part of the Authorising Officer. The Order restricts the use of these authorising powers to a PO7 who holds the position of Authorising Officer. Restricting these powers to a specific PO7 rather than giving them to *any* PO7 provides an extra level of control and will help ensure that only individuals with appropriate experience and specialist knowledge can authorise covert activity.

This Order does *not* make provision for a more junior civilian to authorise any covert activity in urgent circumstances as it is believed that the existing provisions, which allow for a police officer of the rank of Inspector to do so, are sufficient. By way of additional explanation, Article 2(2) of The Regulation of Investigatory Powers Act 2000 (Communications Data) (Amendment) Order 2005 provided for a civilian of the grade PO7 within the SDEA to authorise the acquisition of communications data.

This amendment will give the SDEA powers equivalent to the Serious and Organised Crime Agency (SOCA). Staff within SOCA are civilian and can authorise the use of directed surveillance and CHIS under sections 28 and 29 of the Regulation of Investigatory Powers Act 2000 (RIPA). Authorisations made under these sections can extend to Scotland by virtue of section 46 of RIPA as SOCA is recognised as being a UK-wide organisation.

### **Consultation**

The following bodies have been consulted during the preparation of the instrument:

The Scottish Drug Enforcement Agency  
The Association of Chief Police Officers in Scotland  
The eight Scottish police forces  
The Home Office

### **Financial Effects**

The instrument has no financial effects on the Scottish Executive, local government or on law enforcement agencies beyond the cost to the SDEA of employing a PO7 civilian authorising officer.

Scottish Executive Justice Department  
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