



# Police Act 1997

## 1997 CHAPTER 50

### PART III

#### AUTHORISATION OF ACTION IN RESPECT OF PROPERTY

##### Modifications etc. (not altering text)

- C1** Pt. 3 (ss. 91-108) amended (S.) (29.9.2000) by 2000 asp 11, s. 24(2)(b) (with s. 30); S.S.I. 2000/341, art. 2
- C2** Pt. 3: power to apply (with modifications) conferred (1.10.2002) by Police Reform Act 2002 (c. 30), s. 19(2)(b); S.I. 2002/2306, art. 2(b)(v)

#### *The Commissioners*

### 91 The Commissioners.

- (1) The Prime Minister [<sup>F1</sup>after consultation with the Scottish Ministers], shall appoint for the purposes of this Part—
- a Chief Commissioner, and
  - such number of other Commissioners as the Prime Minister thinks fit.
- (2) The persons appointed under subsection (1) shall be persons who hold or have held high judicial office within the meaning of the <sup>M1</sup>Appellate Jurisdiction Act 1876.
- (3) Subject to subsections (4) to (7), each Commissioner shall hold and vacate office in accordance with the terms of his appointment.
- (4) Each Commissioner shall be appointed for a term of three years.
- (5) A person who ceases to be a Commissioner (otherwise than under subsection (7)) may be reappointed under this section.
- [<sup>F2</sup>(6) Subject to subsection (7), a Commissioner shall not be removed from office before the end of the term for which he is appointed unless—

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- (a) a resolution approving his removal has been passed by each House of Parliament; and
  - (b) a resolution approving his removal has been passed by the Scottish Parliament.]
- (7) A Commissioner may be removed from office by the Prime Minister if after his appointment—
- (a) a bankruptcy order is made against him or his estate is sequestrated or he makes a composition or arrangement with, or grants a trust deed for, his creditors;
  - (b) a disqualification order under the <sup>M2</sup>Company Directors Disqualification Act 1986 or Part II of the <sup>M3</sup>Companies (Northern Ireland) Order 1989, or an order under section 429(2)(b) of the <sup>M4</sup>Insolvency Act 1986 (failure to pay under county court administration order), is made against him [<sup>F3</sup>or his disqualification undertaking is accepted under section 7 or 8 of the Company Directors Disqualification Act 1986]; or
  - (c) he is convicted in the United Kingdom, the Channel Islands or the Isle of Man of an offence and has passed on him a sentence of imprisonment (whether suspended or not).
- (8) The Secretary of State shall pay to each Commissioner [<sup>F4</sup>, other than a commissioner carrying out functions as mentioned in subsection (8A),] such allowances as the Secretary of State considers appropriate.
- [<sup>F5</sup>(8A) The Scottish Ministers shall pay to any Commissioner who carries out his functions under this Part wholly or mainly in Scotland such allowances as the Scottish Ministers consider appropriate.]
- (9) The Secretary of State shall, after consultation with the Chief Commissioner [<sup>F6</sup>and subject to the approval of the Treasury as to numbers], provide the Commissioners [<sup>F7</sup>and any Assistant Surveillance Commissioners holding office under section 63 of the Regulation of Investigatory Powers Act 2000][<sup>F8</sup>, other than any Commissioner carrying out functions as mentioned in subsection (9A),] with such staff as the Secretary of State considers necessary for the discharge of their functions.
- [<sup>F9</sup>(9A) The Scottish Ministers shall, after consultation with the Chief Commissioner, provide any Commissioner who carries out his functions under this Part wholly or mainly in Scotland with such staff as the Scottish Ministers consider necessary for the discharge of his functions.]
- (10) The decisions of the Chief Commissioner or, subject to sections 104 and 106, any other Commissioner (including decisions as to his jurisdiction) shall not be subject to appeal or liable to be questioned in any court.

#### Textual Amendments

- F1** Words in s. 91(1) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(a)**; S.I. 1998/3178, **art. 3**
- F2** S. 91(6) substituted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(b)**; S.I. 1998/3178, **art. 3**
- F3** Words in s. 91(7)(b) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 22(2)**; S.I. 2001/766, **art. 2(1)(a)** (subject to the transitional provisions and savings in art. 3)
- F4** Words in s. 91(8) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(c)**; S.I. 1998/3178, **art. 3**

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- F5** S. 91(8A) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(d)**; S.I. 1998/3178, **art. 3**
- F6** Words in s. 91(9) inserted (25.9.2000) by 2000 c. 23, s. 82, **Sch. 4 para. 8(1)(a)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F7** Words in s. 91(9) inserted (25.9.2000) by 2000 c. 23, s. 82, **Sch. 4 para. 8(1)(b)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F8** Words in s. 91(9) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(f)**; S.I. 1998/3178, **art. 3**
- F9** S. 91(9A) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(g)**; S.I. 1998/3178, **art. 3**.

#### **Modifications etc. (not altering text)**

- C3** S. 91(3)-(8) applied (25.9.2000) by 2000 c. 23, **s. 63(5)** (with s. 82(3)); S.I. 2000/2543, **art. 2**

#### **Commencement Information**

- I1** S. 91 wholly in force at 22.2.1999; s. 91 not in force at Royal Assent see s.135; s. 91 (1)-(9) in force at 1.9.1997 by S.I. 1997/1930, **art. 2**(with art. 2(3)); S. 91(10) in force at 22.2.1999 by S.I. 1999/151, **art. 2**

#### **Marginal Citations**

- M1** 1876 c. 59.  
**M2** 1986 c. 46.  
**M3** S.I. 1989/2404 (N.I.18).  
**M4** 1986 c. 45.

### *Authorisations*

#### **92 Effect of authorisation under Part III.**

No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorised by an authorisation having effect under this Part.

#### **93 Authorisations to interfere with property etc.**

- (1) Where subsection (2) applies, an authorising officer may authorise—
- (a) the taking of such action, in respect of such property in the relevant area, as he may specify,
  - <sup>[F10]</sup>(ab) the taking of such action falling within subsection (1A), in respect of property outside the relevant area, as he may specify, or]
  - (b) the taking of such action in the relevant area as he may specify, in respect of wireless telegraphy.

<sup>[F11]</sup>(1A) The action falling within this subsection is action for maintaining or retrieving any equipment, apparatus or device the placing or use of which in the relevant area has been authorised under this Part or Part II of the Regulation of Investigatory Powers Act 2000 or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by Part II of that Act of 2000.

- (1B) Subsection (1) applies where the authorising officer is a customs officer with the omission of—

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- (a) the words “in the relevant area”, in each place where they occur; and
  - (b) paragraph (ab).]
- (2) This subsection applies where the authorising officer believes—
- (a) that it is necessary for the action specified to be taken [<sup>F12</sup>for the purpose of preventing or detecting] serious crime, and
  - [<sup>F13</sup>(b) that the taking of the action is proportionate to what the action seeks to achieve.]
- [<sup>F14</sup>(2A) Subsection (2) applies where the authorising officer is the Chief Constable or the Deputy Chief Constable of the Royal Ulster Constabulary as if the reference in subsection (2)(a) to preventing or detecting serious crime included a reference to the interests of national security.
- (2B) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any authorisation shall include whether what it is thought necessary to achieve by the authorised action could reasonably be achieved by other means.]
- (3) An authorising officer shall not give an authorisation under this section except on an application made—
- (a) if the authorising officer is within subsection (5)(a) to [<sup>F15</sup>(ea) or (ee)], by a member of his police force,
  - [<sup>F16</sup>(aa) if the authorising officer is within subsection (5)(eb) to (ed), by a member, as the case may be, of the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police;]
  - (b) if the authorising officer is within subsection (5)(f), by a member of the National Criminal Intelligence Service,
  - (c) if the authorising officer is within subsection (5)(g), by a member of the National Crime Squad, or
  - (d) if the authorising officer is within subsection (5)(h), by a customs officer.
- (4) For the purposes of subsection (2), conduct which constitutes one or more offences shall be regarded as serious crime if, and only if,—
- (a) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose, or
  - (b) the offence or one of the offences is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more,
- and, where the authorising officer is within subsection (5)(h), it relates to an assigned matter within the meaning of section 1(1) of the <sup>M5</sup>Customs and Excise Management Act 1979.
- (5) In this section “authorising officer” means—
- (a) the chief constable of a police force maintained under section 2 of the <sup>M6</sup>Police Act 1996 (maintenance of police forces for areas in England and Wales except London);
  - (b) the Commissioner, or an Assistant Commissioner, of Police of the Metropolis;
  - (c) the Commissioner of Police for the City of London;

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- (d) the chief constable of a police force maintained under or by virtue of section 1 of the <sup>M7</sup>Police (Scotland) Act 1967 (maintenance of police forces for areas in Scotland);
  - (e) the Chief Constable or a Deputy Chief Constable of the Royal Ulster Constabulary;
  - [<sup>F17</sup>(ea) the Chief Constable of the Ministry of Defence Police;
  - (eb) the Provost Marshal of the Royal Navy Regulating Branch;
  - (ec) the Provost Marshal of the Royal Military Police;
  - (ed) the Provost Marshal of the Royal Air Force Police;
  - (ee) the Chief Constable of the British Transport Police;]
  - (f) the Director General of the National Criminal Intelligence Service;
  - (g) the Director General of the National Crime Squad [<sup>F18</sup>, or any person holding the rank of assistant chief constable in that Squad who is designated for the purposes of this paragraph by that Director General]; or
  - (h) [<sup>F19</sup>any] customs officer designated by the Commissioners of Customs and Excise for the purposes of this paragraph.
- (6) In this section “relevant area”—
- (a) in relation to a person within paragraph (a), (b) or (c) of subsection (5), means the area in England and Wales for which his police force is maintained;
  - (b) in relation to a person within paragraph (d) of that subsection means the area in Scotland for which his police force is maintained;
  - (c) in relation to a person within paragraph (e) of that subsection, means Northern Ireland;
  - [<sup>F20</sup>(ca) in relation to a person within paragraph (ea), means any place where, under section 2 of the <sup>M8</sup>Ministry of Defence Police Act 1987, the members of the Ministry of Defence Police have the powers and privileges of a constable;
  - (cb) in relation to a person within paragraph (ee), means the United Kingdom;]
  - (d) in relation to the Director General of the National Criminal Intelligence Service, means the United Kingdom;
  - (e) in relation to the Director General of the National Crime Squad, means England and Wales; <sup>F21</sup> . . .
  - (f) . . . . .
- and in each case includes the adjacent United Kingdom waters.
- [<sup>F22</sup>(6A) For the purposes of any authorisation by a person within paragraph (eb), (ec) or (ed) of subsection (5) property is in the relevant area or action in respect of wireless telegraphy is taken in the relevant area if, as the case may be—
- (a) the property is owned, occupied, in the possession of or being used by a person subject to service discipline; or
  - (b) the action is taken in relation to the use of wireless telegraphy by such a person.
- (6B) For the purposes of this section a person is subject to service discipline—
- (a) in relation to the Royal Navy Regulating Branch, if he is subject to the <sup>M9</sup>Naval Discipline Act 1957 or is a civilian to whom Parts I and II of that Act for the time being apply by virtue of section 118 of that Act ;
  - (b) in relation to the Royal Military Police, if he is subject to military law or is a civilian to whom Part II of the <sup>M10</sup>Army Act 1955 for the time being applies by virtue of section 209 of that Act; and

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- (c) in relation to the Royal Air Force Police, if he is subject to air-force law or is a civilian to whom Part II of the <sup>M11</sup>Air Force Act 1955 for the time being applies by virtue of section 209 of that Act.]
- (7) The powers conferred by, or by virtue of, this section are additional to any other powers which a person has as a constable either at common law or under or by virtue of any other enactment and are not to be taken to affect any of those other powers.

#### Textual Amendments

- F10** S. 93(1)(ab) substituted for word “or” (25.9.2000) by 2000 c. 23, s. 75(2) (with s. 82(3)); S.I. 2000/2543, art. 2
- F11** S. 93(1A)(1B) inserted (25.9.2000) by 2000 c. 23, s. 75(3) (with s. 82(3)); S.I. 2000/2543, art. 2
- F12** Words in s. 93(2)(a) substituted (25.9.2000) by 2000 c. 23, s. 75(4)(a) (with s. 82(3)); S.I. 2000/2543, art. 2
- F13** S. 93(2)(b) substituted (25.9.2000) by 2000 c. 23, s. 75(4)(b) (with s. 82(3)); S.I. 2000/2543, art. 2
- F14** S. 93(2A)(2B) inserted (25.9.2000) by 2000 c. 23, s. 75(5) (with s. 82(3)); S.I. 2000/2543, art. 2
- F15** Words in s. 93(3)(a) substituted (25.9.2000) by 2000 c. 23, s. 82(1), Sch. 4 para. 8(2)(a) (with s. 82(3)); S.I. 2000/2543, art. 2
- F16** S. 93(3)(aa) inserted (25.9.2000) by 2000 c. 23, s. 82(1), Sch. 4 para. 8(2)(b) (with s. 82(3)); S.I. 2000/2543, art. 2
- F17** S. 93(5)(ea)-(ee) inserted (25.9.2000) by 2000 c. 23, s. 75(6)(a) (with s. 82(3)); S.I. 2000/2543, art. 2
- F18** Words in s. 93(5)(g) inserted (25.9.2000) by 2000 c. 23, s. 75(6)(b) (with s. 82(3)); S.I. 2000/2543, art. 2
- F19** Word in s. 93(5)(h) substituted (25.9.2000) by 2000 c. 23, s. 75(6)(c) (with s. 82(3)); S.I. 2000/2543, art. 2
- F20** S. 93(6)(ca)(cb) inserted (25.9.2000) by 2000 c. 23, s. 75(7) (with s. 82(3)); S.I. 2000/2543, art. 2
- F21** S. 93(6)(f) and the word “and” immediately preceding it repealed (25.9.2000) by 2000 c. 23, s. 82(2), Sch. 5 (with s. 82(3)); S.I. 2000/2543, art. 2
- F22** S. 93(6A)(6B) inserted (25.9.2000) by 2000 c. 23, s. 75(8) (with s. 82(3)); S.I. 2000/2543, art. 2

#### Modifications etc. (not altering text)

- C4** S. 93 amended (S.) (29.9.2000) by 2000 asp 11, s. 23(5) (with s. 30); S.S.I. 2000/341, art. 2

#### Marginal Citations

- M5** 1979 c. 2.  
**M6** 1996 c. 16.  
**M7** 1967 c. 77.  
**M8** 1987 c. 4.  
**M9** 1957 c. 53.  
**M10** 1955 c. 18.  
**M11** 1955 c. 19.

## 94 Authorisations given in absence of authorising officer.

- (1) Subsection (2) applies where it is not reasonably practicable for an authorising officer to consider an application for an authorisation under section 93 and—
- (a) if the authorising officer is within paragraph (b) or (e) of section 93(5), it is also not reasonably practicable for the application to be considered by any of the other persons within the paragraph concerned; <sup>F23</sup> . . .

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- (b) if the authorising officer is within paragraph (a), (c), (d) [<sup>F24</sup>or (f)] of section 93(5), it is also not reasonably practicable for the application to be considered by his designated deputy [<sup>F25</sup>or
  - (c) if the authorising officer is within paragraph (g) of section 93(5), it is also not reasonably practicable for the application to be considered either—
    - (i) by any other person designated for the purposes of that paragraph; or
    - (ii) by the designated deputy of the Director General of the National Crime Squad.]
- (2) Where this subsection applies, the powers conferred on the authorising officer by section 93 may, in an urgent case, be exercised—
- (a) where the authorising officer is within paragraph (a) or (d) of subsection (5) of that section, by a person holding the rank of assistant chief constable in his force;
  - (b) where the authorising officer is within paragraph (b) of that subsection, by a person holding the rank of commander in the metropolitan police force;
  - (c) where the authorising officer is within paragraph (c) of that subsection, by a person holding the rank of commander in the City of London police force;
  - (d) where the authorising officer is within paragraph (e) of that subsection, by a person holding the rank of assistant chief constable in the Royal Ulster Constabulary;
  - [<sup>F26</sup>(da) where the authorising officer is within paragraph (ea) of that subsection, by a person holding the rank of deputy or assistant chief constable in the Ministry of Defence Police;
  - (db) where the authorising officer is within paragraph (eb) of that subsection, by a person holding the position of assistant Provost Marshal in the Royal Navy Regulating Branch;
  - (dc) where the authorising officer is within paragraph (ec) or (ed) of that subsection, by a person holding the position of deputy Provost Marshal in the Royal Military Police or, as the case may be, in the Royal Air Force Police;
  - (dd) where the authorising officer is within paragraph (ee) of that subsection, by a person holding the rank of deputy or assistant chief constable in the British Transport Police;]
  - (e) where the authorising officer is within paragraph (f) <sup>F27</sup>. . . of that subsection by a person designated for the purposes of this section by the Director General of the National Criminal Intelligence Service <sup>F27</sup>. . . ;
  - [<sup>F28</sup>(ea) where the authorising officer is within paragraph (g) of that subsection, by a person designated for the purposes of this paragraph by the Director General of the National Crime Squad as a person entitled to act in an urgent case;]
  - (f) where the authorising officer is within paragraph (h) of that subsection, by a customs officer designated by the Commissioners of Customs and Excise for the purposes of this section.
- (3) A police member of the National Criminal Intelligence Service or the National Crime Squad appointed under section 9(1)(b) or 55(1)(b) may not be designated under subsection (2)(e) [<sup>F29</sup>or (2)(ea)] unless—
- [<sup>F30</sup>he holds the rank of assistant chief constable in that Service or Squad].
- (4) In subsection (1), “designated deputy”—

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- (a) in the case of an authorising officer within paragraph (a) or (d) of section 93(5), means the person holding the rank of assistant chief constable designated to act <sup>F31</sup> . . . under section 12(4) of the <sup>M12</sup>Police Act 1996 or, as the case may be, section 5(4) of the <sup>M13</sup>Police (Scotland) Act 1967;
- (b) in the case of an authorising officer within paragraph (c) of section 93(5), means the person authorised to act <sup>F31</sup> . . . under section 25 of the <sup>M14</sup>City of London Police Act 1839; <sup>F32</sup> . . .
- (c) in the case of an authorising officer within paragraph (f) or (g) of section 93(5), means the person designated to act <sup>F31</sup> . . . under section 8 or 54 <sup>F33</sup> . . .
- (d) .....

#### Textual Amendments

- F23** Word at the end of s. 94(1)(a) repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F24** Words in s. 94(1) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(3)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F25** S. 94(1)(c) and the word “or” immediately preceding it inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(3)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F26** S. 94(2)(da)-(dd) inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(4)(a)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F27** Words in s. 94(2)(e) repealed (25.9.2000) by 2000 c. 23, s. 82(1)(2), **Sch. 4 para. 8(4)(b)**, **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F28** S. 94(2)(ea) inserted (25.9.2000) by 2000 c. 23, s.82(1), **Sch. 4 para. 8(4)(c)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F29** Words in s. 94(3) inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(5)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F30** Words in s. 94(3) substituted (for s. 94(3)(a)(b)) (30.9.1998) by 1998 c. 37, **s. 113(2)**; S.I. 1998/2327, **art. 2**
- F31** Words in s. 94(4) repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F32** Word in s. 94(4) repealed (30.9.1998) by 1998 c. 37, s. 113(3), s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2**
- F33** S. 94(4)(d) and the word “and” immediately preceding it repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

#### Modifications etc. (not altering text)

- C5** S. 94 applied (*prosp.*) by 2000 c. 23, ss. 49, 83(2), **Sch. 2 para. 2(7)** (with s. 82(3))

#### Marginal Citations

- M12** 1996 c. 16.
- M13** 1967 c. 77.
- M14** 1839 c. xciv.

## 95 Authorisations: form and duration etc.

- (1) An authorisation shall be in writing, except that in an urgent case an authorisation (other than one given by virtue of section 94) may be given orally.
- (2) An authorisation shall, unless renewed under subsection (3), cease to have effect—



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- (a) if given orally or by virtue of section 94, at the end of the period of 72 hours beginning with the time when it took effect;
  - (b) in any other case, at the end of the period of three months beginning with the day on which it took effect.
- (3) If at any time before an authorisation would cease to have effect the authorising officer who gave the authorisation, or in whose absence it was given, considers it necessary for the authorisation to continue to have effect for the purpose for which it was issued, he may, in writing, renew it for a period of three months beginning with the day on which it would cease to have effect.
- (4) A person shall cancel an authorisation given by him if satisfied that [<sup>F34</sup>the authorisation is one in relation to which the requirements of paragraphs (a) and (b) of section 93(2) are no longer satisfied.]
- (5) An authorising officer shall cancel an authorisation given in his absence if satisfied that [<sup>F34</sup>the authorisation is one in relation to which the requirements of paragraphs (a) and (b) of section 93(2) are no longer satisfied.]
- (6) If the authorising officer who gave the authorisation is within paragraph (b) [<sup>F35</sup>, (e) or (g)] of section 93(5), the power conferred on that person by subsections (3) and (4) above shall also be exercisable by each of the other persons within the paragraph concerned.
- (7) Nothing in this section shall prevent a designated deputy from exercising the powers conferred on an authorising officer within paragraph (a), (c), (d), (f) or (g) of section 93(5) by subsections (3), (4) and (5) above.

#### Textual Amendments

- F34** Words in s. 95(4)(5) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(6)(a)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F35** Words in s. 95(6) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(6)(b)** (with s. 82(3)); S.I. 2000/2543, **art. 2**

## 96 Notification of authorisations etc.

- (1) Where a person gives, renews or cancels an authorisation, he shall, as soon as is reasonably practicable and in accordance with arrangements made by the Chief Commissioner, give notice in writing that he has done so to a Commissioner appointed under section 91(1)(b).
- (2) Subject to subsection (3), a notice under this section shall specify such matters as the Secretary of State may by order prescribe.
- (3) A notice under this section of the giving or renewal of an authorisation shall specify—
  - (a) whether section 97 applies to the authorisation or renewal, and
  - (b) where that section does not apply by virtue of subsection (3) of that section, the grounds on which the case is believed to be one of urgency.
- (4) Where a notice is given to a Commissioner under this section, he shall, as soon as is reasonably practicable, scrutinise the notice.
- (5) An order under subsection (2) shall be made by statutory instrument.

*Status: Point in time view as at 02/04/2001.*

*Changes to legislation: Police Act 1997, Part III is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) A statutory instrument which contains an order under subsection (2) shall not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

**Commencement Information**

- I2** S. 96 wholly in force at 22.2.1999; s. 96 not in force at Royal Assent see s. 135; s. 96 in force for certain purposes at 1.9.1997 by [S.I. 1997/1930](#), [art. 2](#)(with art. 2(3)); s. 96 in force at 22.2.1999 insofar as not already in force by [S.I. 1999/151](#), [art. 2](#)

*Authorisations requiring approval*

**97 Authorisations requiring approval.**

- (1) An authorisation to which this section applies shall not take effect until—
- (a) it has been approved in accordance with this section by a Commissioner appointed under section 91(1)(b), and
  - (b) the person who gave the authorisation has been notified under subsection (4).
- (2) Subject to subsection (3), this section applies to an authorisation if, at the time it is given, the person who gives it believes—
- (a) that any of the property specified in the authorisation—
    - (i) is used wholly or mainly as a dwelling or as a bedroom in a hotel, or
    - (ii) constitutes office premises, or
  - (b) that the action authorised by it is likely to result in any person acquiring knowledge of—
    - (i) matters subject to legal privilege,
    - (ii) confidential personal information, or
    - (iii) confidential journalistic material.
- (3) This section does not apply to an authorisation where the person who gives it believes that the case is one of urgency.
- (4) Where a Commissioner receives a notice under section 96 which specifies that this section applies to the authorisation, he shall as soon as is reasonably practicable—
- (a) decide whether to approve the authorisation or refuse approval, and
  - (b) give written notice of his decision to the person who gave the authorisation.
- (5) A Commissioner shall approve an authorisation if, and only if, he is satisfied that there are reasonable grounds for believing the matters specified in section 93(2).
- (6) Where a Commissioner refuses to approve an authorisation, he shall, as soon as is reasonably practicable, make a report of his findings to the authorising officer who gave it or in whose absence it was given<sup>F36</sup> . . .
- [<sup>F37</sup>(6A) The reference in subsection (6) to the authorising officer who gave the authorisation or in whose absence it was given shall be construed, in the case of an authorisation given by or in the absence of a person within paragraph (b), (e) or (g) of section 93(5), as a reference to the Commissioner of Police, Chief Constable or, as the case may be, Director General mentioned in the paragraph concerned.]

*Status: Point in time view as at 02/04/2001.*

*Changes to legislation: Police Act 1997, Part III is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) This section shall apply in relation to a renewal of an authorisation as it applies in relation to an authorisation (the references in subsection (2)(a) and (b) to the authorisation being construed as references to the authorisation renewed).
- (8) In this section—
- “office premises” has the meaning given in section 1(2) of the <sup>M15</sup>Offices, Shops and Railway Premises Act 1963;
  - “hotel” means premises used for the reception of guests who desire to sleep in the premises.

#### Textual Amendments

- F36** Words in s. 97(6) repealed (25.9.2000) by 2000 c. 23, s. 82(1)(2), Sch. 4 para. 8(7), Sch. 5 (with s. 82(3)); S.I. 2000/2543, art. 2
- F37** S. 97(6A) inserted (25.9.2000) by 2000 c. 23, s. 82(1), Sch. 4 para. 82(3); S.I. 2000/2543, art. 2

#### Marginal Citations

- M15** 1963 c. 41.

## 98 Matters subject to legal privilege.

- (1) Subject to subsection (5) below, in section 97 “matters subject to legal privilege” means matters to which subsection (2), (3) or (4) below applies.
- (2) This subsection applies to communications between a professional legal adviser and—
- (a) his client, or
  - (b) any person representing his client,
- which are made in connection with the giving of legal advice to the client.
- (3) This subsection applies to communications—
- (a) between a professional legal adviser and his client or any person representing his client, or
  - (b) between a professional legal adviser or his client or any such representative and any other person,
- which are made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- (4) This subsection applies to items enclosed with or referred to in communications of the kind mentioned in subsection (2) or (3) and made—
- (a) in connection with the giving of legal advice, or
  - (b) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- (5) For the purposes of section 97—
- (a) communications and items are not matters subject to legal privilege when they are in the possession of a person who is not entitled to possession of them, and
  - (b) communications and items held, or oral communications made, with the intention of furthering a criminal purpose are not matters subject to legal privilege.

*Status: Point in time view as at 02/04/2001.*

*Changes to legislation: Police Act 1997, Part III is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **99 Confidential personal information.**

- (1) In section 97 “confidential personal information” means—
- (a) personal information which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office, and which he holds in confidence, and
  - (b) communications as a result of which personal information—
    - (i) is acquired or created as mentioned in paragraph (a), and
    - (ii) is held in confidence.
- (2) For the purposes of this section “personal information” means information concerning an individual (whether living or dead) who can be identified from it and relating—
- (a) to his physical or mental health, or
  - (b) to spiritual counselling or assistance given or to be given to him.
- (3) A person holds information in confidence for the purposes of this section if he holds it subject—
- (a) to an express or implied undertaking to hold it in confidence, or
  - (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment (including an enactment contained in an Act passed after this Act).

## **100 Confidential journalistic material.**

- (1) In section 97 “confidential journalistic material” means—
- (a) material acquired or created for the purposes of journalism which—
    - (i) is in the possession of persons who acquired or created it for those purposes,
    - (ii) is held subject to an undertaking, restriction or obligation of the kind mentioned in section 99(3), and
    - (iii) has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism, and
  - (b) communications as a result of which information is acquired for the purposes of journalism and held as mentioned in paragraph (a)(ii).
- (2) For the purposes of subsection (1), a person who receives material, or acquires information, from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

### *Code of Practice*

**F38** 101 .....

#### **Textual Amendments**

**F38** S. 101 repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

*Status: Point in time view as at 02/04/2001.*

*Changes to legislation: Police Act 1997, Part III is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Complaints etc.*

F39 102 .....

#### **Textual Amendments**

**F39** S. 102 repealed (25.9.2000) by 2000 c. 23, ss. 70(2)(c), 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2** (and by art. 6(1) of that S.I. the repeal is expressed to be brought into force on 2.10.2000 subject to the provisions of art. 6(2)-(5))

### **103 Quashing of authorisations etc.**

- (1) Where, at any time, a Commissioner appointed under section 91(1)(b) is satisfied that, at the time an authorisation was given or renewed, there were no reasonable grounds for believing the matters specified in section 93(2), he may quash the authorisation or, as the case may be, renewal.
- (2) Where, in the case of an authorisation or renewal to which section 97 does not apply, a Commissioner appointed under section 91(1)(b) is at any time satisfied that, at the time the authorisation was given or, as the case may be, renewed,—
  - (a) there were reasonable grounds for believing any of the matters specified in subsection (2) of section 97, and
  - (b) there were no reasonable grounds for believing the case to be one of urgency for the purposes of subsection (3) of that section,he may quash the authorisation or, as the case may be, renewal.
- (3) Where a Commissioner quashes an authorisation or renewal under subsection (1) or (2), he may order the destruction of any records relating to information obtained by virtue of the authorisation (or, in the case of a renewal, relating wholly or partly to information so obtained after the renewal) other than records required for pending criminal or civil proceedings.
- (4) If a Commissioner appointed under section 91(1)(b) is satisfied that, at any time after an authorisation was given or, in the case of an authorisation renewed under section 95, after it was renewed, there were no reasonable grounds for believing the matters specified in section 93(2), he may cancel the authorisation.
- (5) Where—
  - (a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (1) or (2)), and
  - (b) a Commissioner appointed under section 91(1)(b) is satisfied that, at any time during the period of the authorisation, there were no reasonable grounds for believing the matters specified in section 93(2),he may order the destruction of any records relating, wholly or partly, to information which was obtained by virtue of the authorisation after that time (other than records required for pending criminal or civil proceedings).
- (6) Where a Commissioner exercises his powers under subsection (1), (2) or (4), he shall, if he is satisfied that there are reasonable grounds for doing so, order that the authorisation shall be effective, for such period as he shall specify, so far as it

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authorises the taking of action to retrieve anything left on property in accordance with the authorisation.

- (7) Where a Commissioner exercises a power conferred by this section, he shall, as soon as is reasonably practicable, make a report of his findings—
  - (a) to the authorising officer who gave the authorisation or in whose absence it was given, and
  - (b) to the Chief Commissioner;

[<sup>F40</sup>and subsection (6A) of section 97 shall apply for the purposes of this subsection as it applies for the purposes of subsection (6) of that section.]
- (8) Where—
  - (a) a decision is made under subsection (1) or (2) and an order for the destruction of records is made under subsection (3), or
  - (b) a decision to order the destruction of records is made under subsection (5),

the order shall not become operative until the period for appealing against the decision has expired and, where an appeal is made, a decision dismissing it has been made by the Chief Commissioner.
- (9) A Commissioner may exercise any of the powers conferred by this section notwithstanding any approval given under section 97.

**Textual Amendments**

**F40** Words in s. 103(7) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(8)** (with s. 82(3)); S.I. 2000/2543, **art. 2**

*Appeals*

**104 Appeals by authorising officers.**

- (1) An authorising officer who gives an authorisation, or in whose absence it is given, may, within the prescribed period, appeal to the Chief Commissioner against—
  - (a) any refusal to approve the authorisation or any renewal of it under section 97;
  - (b) any decision to quash the authorisation, or any renewal of it, under subsection (1) of section 103;
  - (c) any decision to quash the authorisation, or any renewal of it, under subsection (2) of that section;
  - (d) any decision to cancel the authorisation under subsection (4) of that section;
  - (e) any decision to order the destruction of records under subsection (5) of that section;
  - (f) any refusal to make an order under subsection (6) of that section;
  - <sup>F41</sup>(g) .....
- (2) In subsection (1), “the prescribed period” means the period of seven days beginning with the day on which the refusal, decision or, as the case may be, determination appealed against is reported to the authorising officer.
- (3) In determining an appeal within subsection (1)(a), the Chief Commissioner shall, if he is satisfied that there are reasonable grounds for believing the matters specified

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in section 93(2), allow the appeal and direct the Commissioner to approve the authorisation or renewal under that section.

(4) In determining—

(a) an appeal within subsection (1)(b), <sup>F42</sup> . . .

(b) . . . . .

the Chief Commissioner shall allow the appeal unless he is satisfied that, at the time the authorisation was given or, as the case may be, renewed there were no reasonable grounds for believing the matters specified in section 93(2).

(5) In determining—

(a) an appeal within subsection (1)(c), <sup>F42</sup> . . .

(b) . . . . .

the Chief Commissioner shall allow the appeal unless he is satisfied as mentioned in section 103(2).

(6) In determining—

(a) an appeal within subsection (1)(d) or (e), <sup>F42</sup> . . .

(b) . . . . .

the Chief Commissioner shall allow the appeal unless he is satisfied that at the time to which the decision relates there were no reasonable grounds for believing the matters specified in section 93(2).

(7) In determining an appeal within subsection (1)(f), the Chief Commissioner shall allow the appeal and order that the authorisation shall be effective to the extent mentioned in section 103(6), for such period as he shall specify, if he is satisfied that there are reasonable grounds for making such an order.

(8) Where an appeal is allowed under this section, the Chief Commissioner shall—

(a) in the case of an appeal within subsection (1)(b) or (c), also quash any order made by the Commissioner to destroy records relating to information obtained by virtue of the authorisation concerned, <sup>F43</sup> . . .

(b) . . . . .

**Textual Amendments**

**F41** S. 104(1)(g) repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

**F42** S. 104(4)(b)(5)(b)(6)(b) and the word “or” immediately preceding them repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

**F43** S. 104(8)(b) and the word “and” immediately preceding it repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

**105 Appeals by authorising officers: supplementary.**

(1) Where the Chief Commissioner determines an appeal under section 104—

(a) he shall give notice of his determination—

(i) to the authorising officer concerned, [<sup>F44</sup>and]

(ii) to the Commissioner against whose refusal, decision or determination the appeal was made, <sup>F45</sup> . . .

(iii) . . . . .

(b) if he dismisses the appeal, he shall make a report of his findings—



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- (i) to the authorising officer concerned,
  - (ii) to the Commissioner against whose refusal, decision or determination the appeal was made, and
  - (iii) under section 107(2), to the Prime Minister [and the Scottish Ministers].
- (2) Subject to subsection (1)(b), the Chief Commissioner shall not give any reasons for a determination under section 104.
- (3) Nothing in section 104 shall prevent a designated deputy from exercising the powers conferred by subsection (1) of that section on an authorising officer within paragraph (a), (c), (d), (f) or (g) of section 93(5).

#### Textual Amendments

- F44** Word in s. 105(1)(a)(i) inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(9)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F45** S. 105(1)(a)(iii) and the word “and” immediately preceding it repealed (25.9.2000) by 2000 c. 23, s. 82(1)(2), **Sch. 4 para. 8(9)**, **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

#### Modifications etc. (not altering text)

- C6** Words in s. 105(1)(b)(iii) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(3)**; S.I. 1998/3178, **art. 3**

<sup>F46</sup>106 .....

#### Textual Amendments

- F46** S. 106 repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

### General

#### 107 Supplementary provisions relating to Commissioners.

- (1) The Chief Commissioner shall keep under review the performance of functions under this Part.
  - (2) The Chief Commissioner shall make an annual report on [<sup>F47</sup>the matters with which he is concerned] to the Prime Minister [<sup>F48</sup>and to the Scottish Ministers] and may at any time report to him [<sup>F48</sup>or them (as the case may require)] on [<sup>F47</sup>anything relating to any of those matters].
  - (3) The Prime Minister shall lay before each House of Parliament a copy of each annual report made by the Chief Commissioner under subsection (2) together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (4) below.
- [<sup>F49</sup>(3A) The Scottish Ministers shall lay before the Scottish Parliament a copy of each annual report made by the Chief Commissioner under subsection (2), together with



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a statement as to whether any matter has been excluded from that copy in pursuance of subsection (4) below.]

- (4) The Prime Minister may exclude a matter from the copy of a report as laid before each House of Parliament, if it appears to him, after consultation with the Chief Commissioner [<sup>F50</sup>and the Scottish Ministers], that the publication of that matter in the report would be prejudicial to [<sup>F51</sup>any of the purposes for which authorisations may be given or granted under this Part of this Act or Part II of the Regulation of Investigatory Powers Act 2000 or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by Part II of that Act of 2000 or] to the discharge of—
- (a) the functions of any police authority,
  - (b) the functions of the Service Authority for the National Criminal Intelligence Service or the Service Authority for the National Crime Squad, or
  - (c) the duties of the Commissioners of Customs and Excise.
- (5) Any person having functions under this Part, and any person taking action in relation to which an authorisation was given, shall comply with any request of a Commissioner for documents or information required by him for the purpose of enabling him to discharge his functions.

[<sup>F52</sup>(5A) It shall be the duty of—

- (a) every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Chief Commissioner,
- (b) every person who has engaged in conduct with the authority of such an authorisation,
- (c) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a),
- (d) every person who holds or has held any office, rank or position with any public authority for whose benefit (within the meaning of Part II of the Regulation of Investigatory Powers Act 2000) activities which are or may be subject to any such review have been or may be carried out, and
- (e) every person to whom a notice under section 49 of the Regulation of Investigatory Powers Act 2000 (notices imposing a disclosure requirement in respect of information protected by a key) has been given in relation to any information obtained by conduct to which such an authorisation relates,

to disclose or provide to the Chief Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.

- (5B) It shall be the duty of every Commissioner to give the tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000 all such assistance (including his opinion as to any issue falling to be determined by that tribunal) as that tribunal may require—
- (a) in connection with the investigation of any matter by that tribunal; or
  - (b) otherwise for the purposes of that tribunal’s consideration or determination of any matter.
- (5C) In this section “public authority” means any public authority within the meaning of section 6 of the <sup>M16</sup>Human Rights Act 1998 (acts of public authorities) other than a court or tribunal.]

<sup>F53</sup>(6) . . . . .

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#### Textual Amendments

- F47** Words in s. 107(2) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(10)(a)(i)(ii)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F48** Words in s. 107(2) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(5)(a)(i)(ii)**; S.I. 1998/3178, **art. 3**
- F49** S. 107(3A) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(5)(b)**; S.I. 1998/3178, **art. 3**
- F50** Words in s. 107(4) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(5)(c)**; S.I. 1998/3178, **art. 3**
- F51** Words in s. 107(4) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(10)(b)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F52** S. 107(5A)-(5C) inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(10)(c)(11)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F53** S. 107(6) repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

#### Modifications etc. (not altering text)

- C7** S. 107(3)(4) applied (25.9.2000) by 2000 c. 23, s. 39(3) (with s. 82(3)); S.I. 2000/2543, **art. 2**

#### Marginal Citations

- M16** 1998 c. 42.

## 108 Interpretation of Part III.

(1) In this Part—

[<sup>F54</sup>“Assistant Commissioner of Police of the Metropolis” includes the Deputy Commissioner of Police of the Metropolis;]

“authorisation” means an authorisation under section 93;

“authorising officer” has the meaning given by section 93(5);

“criminal proceedings” includes—

(a) proceedings in the United Kingdom or elsewhere before a court-martial constituted under the <sup>M17</sup>Army Act 1955, the <sup>M18</sup>Air Force Act 1955 or the <sup>M19</sup>Naval Discipline Act 1957 or a disciplinary court constituted under section 50 of the Act of 1957,

(b) proceedings before the Courts-Martial Appeal Court, and

(c) proceedings before a Standing Civilian Court;

“customs officer” means an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the <sup>M20</sup>Customs and Excise Management Act 1979;

“designated deputy” has the meaning given in section 94(4);

“United Kingdom waters” has the meaning given in section 30(5) of the <sup>M21</sup>Police Act 1996; and

“wireless telegraphy” has the same meaning as in the <sup>M22</sup>Wireless Telegraphy Act 1949 and, in relation to wireless telegraphy, “interfere” has the same meaning as in that Act.

(2) Where, under this Part, notice of any matter is required to be given in writing, the notice may be transmitted by electronic means.

(3) For the purposes of this Part, an authorisation (or renewal) given—

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- (a) by the designated deputy of an authorising officer, or
- (b) by a person on whom an authorising officer's powers are conferred by section 94,

shall be treated as an authorisation (or renewal) given in the absence of the authorising officer concerned; and references to the authorising officer in whose absence an authorisation (or renewal) was given shall be construed accordingly.

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#### **Textual Amendments**

**F54** S. 108(1): definition of  
“Assistant Commissioner of Police of the Metropolis”  
inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(12)** (with s. 82(3)); S.I. 2000/2543, **art. 2**

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#### **Marginal Citations**

**M17** 1955 c. 18.  
**M18** 1955 c. 19.  
**M19** 1957 c. 53.  
**M20** 1979 c. 2.  
**M21** 1996 c. 16.  
**M22** 1949 c. 54.

**Status:**

Point in time view as at 02/04/2001.

**Changes to legislation:**

Police Act 1997, Part III is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.