

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Surveillance and Covert Human Intelligence Sources

Introductory

180. This Part of the Act creates a system of authorisations for various types of surveillance and the conduct and use of covert human intelligence sources. In common with other Parts of the Act, the provisions themselves do not impose a requirement on public authorities to seek or obtain an authorisation where, under the Act, one is available (see section 80). Nevertheless, the consequences of not obtaining an authorisation under this Part may be, where there is an interference by a public authority with Article 8 rights and there is no other source of authority, that the action is unlawful by virtue of section 6 of the Human Rights Act 1998.

Section 26: Conduct to which Part II applies

181. This section describes and defines the conduct that can be authorised under this Part of the Act. Three types of activity are covered: "directed surveillance", "intrusive surveillance" and the conduct and use of covert human intelligence sources.
182. "Directed surveillance" is defined in *subsection (2)* as covert surveillance that is undertaken in relation to a specific investigation or a specific operation which is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance. By *subsection (9)*, surveillance will be covert where it is carried out in a manner calculated to ensure that the person or persons subject to the surveillance are unaware that it is or may be taking place. Directed surveillance may also include the interception of communications where there is no interception warrant and where the communication is sent by or is intended for a person who has consented to the interception (*section 48(4)*).
183. "Intrusive surveillance" is defined in *subsections (3) to (5)* as covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle. This kind of surveillance may take place by means either of a person or device located inside residential premises or a private vehicle of the person who is subject to the surveillance or by means of a device placed outside which consistently provides a product of equivalent quality and detail as a product which would be obtained from a device located inside.
184. For these purposes, a private vehicle is one used primarily for private purposes, for example for family, leisure or domestic purposes (*section 48(1)*). *Subsection (4)*

*These notes refer to the Regulation of Investigatory Powers
Act 2000 (c.23) which received Royal Assent on 28 July 2000*

provides that surveillance is not intrusive when the device is one that only provides information about the location of the vehicle (eg a tracking device).

185. *Subsection (6)* provides that surveillance carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use of a television receiver is neither directed nor intrusive.
186. *Subsection (8)* defines a "covert human intelligence source".
187. *Subsection (10)* defines "private information", in relation to a person, as including any information relating to his private or family life.