



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART II

#### SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES

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

- C1** Pt. II (ss. 26-48) applied (with modifications)(16.3.2001) by [S.I. 2001/1057, arts. 2, 3](#)  
Pt. II (ss. 26-48): power to apply (with modifications) conferred (1.10.2002) by [2002 c. 30, s. 19\(2\)\(a\)](#); [S.I. 2002/2306, art. 2\(b\)\(v\)](#)
- C2** Pt. 2 modified (1.4.2004) by [The Independent Police Complaints Commission \(Investigatory Powers\) Order 2004 \(S.I. 2004/815\), art. 3](#) (as amended (E.W.) (8.1.2018) by [The Independent Office for Police Conduct \(Transitional and Consequential\) Regulations 2017 \(S.I. 2017/1250\), regs. 1, 10\(6\)](#) (with reg. 37))

#### *Introductory*

#### **26 Conduct to which Part II applies.**

- (1) This Part applies to the following conduct—
- directed surveillance;
  - intrusive surveillance; and
  - the conduct and use of covert human intelligence sources.
- (2) Subject to subsection (6), surveillance is directed for the purposes of this Part if it is covert but not intrusive and is undertaken—
- for the purposes of a specific investigation or a specific operation;
  - in such a manner as 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

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- (c) 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.
- (3) Subject to subsections (4) to (6), surveillance is intrusive for the purposes of this Part if, and only if, it is covert surveillance that—
- (a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
  - (b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.
- (4) For the purposes of this Part surveillance is not intrusive to the extent that—
- (a) it is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle; or
  - (b) it is surveillance consisting in any such interception of a communication as falls within section 48(4).
- (5) For the purposes of this Part surveillance which—
- (a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle, but
  - (b) is carried out without that device being present on the premises or in the vehicle,
- is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.
- (6) For the purposes of this Part surveillance which—
- (a) is carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use in any residential or other premises of a television receiver (within the meaning of [F1Part 4 of the Communications Act 2003]), and
  - (b) is carried out from outside those premises exclusively for that purpose,
- is neither directed nor intrusive.
- (7) In this Part—
- (a) references to the conduct of a covert human intelligence source are references to any conduct of such a source which falls within any of paragraphs (a) to (c) of subsection (8), or is incidental to anything falling within any of those paragraphs; and
  - (b) references to the use of a covert human intelligence source are references to inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source.
- (8) For the purposes of this Part a person is a covert human intelligence source if—
- (a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
  - (b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or

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- (c) he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.
- (9) For the purposes of this section—
- (a) surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place;
  - (b) a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose; and
  - (c) a relationship is used covertly, and information obtained as mentioned in subsection (8)(c) is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.
- (10) In this section “private information”, in relation to a person, includes any information relating to his private or family life.
- (11) References in this section, in relation to a vehicle, to the presence of a surveillance device in the vehicle include references to its being located on or under the vehicle and also include references to its being attached to it.

#### Textual Amendments

- F1** Words in s. 26(6)(a) substituted (1.4.2004) by [Communications Act 2003 \(c. 21\), ss. 406, 411\(2\)\(3\), Sch. 17 para. 161\(2\)](#) (with transitional provisions in [Sch. 18](#)); [S.I. 2003/3142, art. 4\(2\), Sch. 2](#)

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

## **27 Lawful surveillance etc.**

- (1) Conduct to which this Part applies shall be lawful for all purposes if—
- (a) an authorisation under this Part confers an entitlement to engage in that conduct on the person whose conduct it is; and
  - (b) his conduct is in accordance with the authorisation.
- (2) A person shall not be subject to any civil liability in respect of any conduct of his which—
- (a) is incidental to any conduct that is lawful by virtue of subsection (1); and
  - (b) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question.
- (3) The conduct that may be authorised under this Part includes conduct outside the United Kingdom.
- (4) In this section “relevant enactment” means—
- (a) an enactment contained in this Act;
  - (b) section 5 of the <sup>M1</sup>Intelligence Services Act 1994 (warrants for the intelligence services); or

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- (c) an enactment contained in Part III of the <sup>M2</sup>Police Act 1997 (powers of the police and of customs officers).

**Marginal Citations**

**M1** 1994 c. 13.

**M2** 1997 c. 50.

**28 Authorisation of directed surveillance.**

- (1) Subject to the following provisions of this Part, the persons designated for the purposes of this section shall each have power to grant authorisations for the carrying out of directed surveillance.
- (2) A person shall not grant an authorisation for the carrying out of directed surveillance unless he believes—
  - (a) that the authorisation is necessary on grounds falling within subsection (3); and
  - (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.
- (3) An authorisation is necessary on grounds falling within this subsection if it is necessary—
  - (a) in the interests of national security;
  - (b) for the purpose of preventing or detecting crime or of preventing disorder;
  - (c) in the interests of the economic well-being of the United Kingdom;
  - (d) in the interests of public safety;
  - (e) for the purpose of protecting public health;
  - (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
  - (g) for any purpose (not falling within paragraphs (a) to (f)) which is specified for the purposes of this subsection by an order made by the Secretary of State.
- (4) The conduct that is authorised by an authorisation for the carrying out of directed surveillance is any conduct that—
  - (a) consists in the carrying out of directed surveillance of any such description as is specified in the authorisation; and
  - (b) is carried out in the circumstances described in the authorisation and for the purposes of the investigation or operation specified or described in the authorisation.
- (5) The Secretary of State shall not make an order under subsection (3)(g) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

**29 Authorisation of covert human intelligence sources.**

- (1) Subject to the following provisions of this Part, the persons designated for the purposes of this section shall each have power to grant authorisations for the conduct or the use of a covert human intelligence source.

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- (2) A person shall not grant an authorisation for the conduct or the use of a covert human intelligence source unless he believes—
  - (a) that the authorisation is necessary on grounds falling within subsection (3);
  - (b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use; and
  - (c) that arrangements exist for the source's case that satisfy the requirements of subsection (5) and such other requirements as may be imposed by order made by the Secretary of State.
- (3) An authorisation is necessary on grounds falling within this subsection if it is necessary—
  - (a) in the interests of national security;
  - (b) for the purpose of preventing or detecting crime or of preventing disorder;
  - (c) in the interests of the economic well-being of the United Kingdom;
  - (d) in the interests of public safety;
  - (e) for the purpose of protecting public health;
  - (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
  - (g) for any purpose (not falling within paragraphs (a) to (f)) which is specified for the purposes of this subsection by an order made by the Secretary of State.
- (4) The conduct that is authorised by an authorisation for the conduct or the use of a covert human intelligence source is any conduct that—
  - (a) is comprised in any such activities involving conduct of a covert human intelligence source, or the use of a covert human intelligence source, as are specified or described in the authorisation;
  - (b) consists in conduct by or in relation to the person who is so specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and
  - (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.
- (5) For the purposes of this Part there are arrangements for the source's case that satisfy the requirements of this subsection if such arrangements are in force as are necessary for ensuring—
  - (a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare;
  - (b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;
  - (c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source;
  - (d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and

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- (e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.
- (6) The Secretary of State shall not make an order under subsection (3)(g) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (7) The Secretary of State may by order—
  - (a) prohibit the authorisation under this section of any such conduct or uses of covert human intelligence sources as may be described in the order; and
  - (b) impose requirements, in addition to those provided for by subsection (2), that must be satisfied before an authorisation is granted under this section for any such conduct or uses of covert human intelligence sources as may be so described.
- (8) In this section “relevant investigating authority”, in relation to an authorisation for the conduct or the use of an individual as a covert human intelligence source, means (subject to subsection (9)) the public authority for whose benefit the activities of that individual as such a source are to take place.
- (9) In the case of any authorisation for the conduct or the use of a covert human intelligence source whose activities are to be for the benefit of more than one public authority, the references in subsection (5) to the relevant investigating authority are references to one of them (whether or not the same one in the case of each reference).

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

**C3** S. 29(2)(c) modified (6.11.2000) by [S.I. 2000/2793](#), [art. 4](#)

**30 Persons entitled to grant authorisations under ss. 28 and 29.**

- (1) Subject to subsection (3), the persons designated for the purposes of sections 28 and 29 are the individuals holding such offices, ranks or positions with relevant public authorities as are prescribed for the purposes of this subsection by an order under this section.
- (2) For the purposes of the grant of an authorisation that combines—
  - (a) an authorisation under section 28 or 29, and
  - (b) an authorisation by the Secretary of State for the carrying out of intrusive surveillance,
 the Secretary of State himself shall be a person designated for the purposes of that section.
- (3) An order under this section may impose restrictions—
  - (a) on the authorisations under sections 28 and 29 that may be granted by any individual holding an office, rank or position with a specified public authority; and
  - (b) on the circumstances in which, or the purposes for which, such authorisations may be granted by any such individual.
- (4) A public authority is a relevant public authority for the purposes of this section—
  - (a) in relation to section 28 if it is specified in Part I or II of Schedule 1; and

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- (b) in relation to section 29 if it is specified in Part I of that Schedule.
- (5) An order under this section may amend Schedule 1 by—
  - (a) adding a public authority to Part I or II of that Schedule;
  - (b) removing a public authority from that Schedule;
  - (c) moving a public authority from one Part of that Schedule to the other;
  - (d) making any change consequential on any change in the name of a public authority specified in that Schedule.
- (6) Without prejudice to section 31, the power to make an order under this section shall be exercisable by the Secretary of State.
- (7) The Secretary of State shall not make an order under subsection (5) containing any provision for—
  - (a) adding any public authority to Part I or II of that Schedule, or
  - (b) moving any public authority from Part II to Part I of that Schedule,unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

### **31 Orders under s. 30 for Northern Ireland.**

- (1) Subject to subsections (2) and (3), the power to make an order under section 30 for the purposes of the grant of authorisations for conduct in Northern Ireland shall be exercisable by the Office of the First Minister and deputy First Minister in Northern Ireland (concurrently with being exercisable by the Secretary of State).
- (2) The power of the Office of the First Minister and deputy First Minister to make an order under section 30 by virtue of subsection (1) or (3) of that section shall not be exercisable in relation to any public authority other than—
  - (a) the Food Standards Agency;
  - <sup>F2</sup>(b) .....
  - (c) an authority added to Schedule 1 by an order made by that Office;
  - (d) an authority added to that Schedule by an order made by the Secretary of State which it would (apart from that order) have been within the powers of that Office to add to that Schedule for the purposes mentioned in subsection (1) of this section.
- (3) The power of the Office of the First Minister and deputy First Minister to make an order under section 30—
  - (a) shall not include power to make any provision dealing with an excepted matter;
  - (b) shall not include power, except with the consent of the Secretary of State, to make any provision dealing with a reserved matter.
- (4) The power of the Office of the First Minister and deputy First Minister to make an order under section 30 shall be exercisable by statutory rule for the purposes of the <sup>M3</sup>Statutory Rules (Northern Ireland) Order 1979.
- (5) A statutory rule containing an order under section 30 which makes provision by virtue of subsection (5) of that section for—
  - (a) adding any public authority to Part I or II of Schedule 1, or
  - (b) moving any public authority from Part II to Part I of that Schedule,

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shall be subject to affirmative resolution (within the meaning of section 41(4) of the <sup>M4</sup>Interpretation Act (Northern Ireland) 1954).

- (6) A statutory rule containing an order under section 30 (other than one to which subsection (5) of this section applies) shall be subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).
- (7) An order under section 30 made by the Office of the First Minister and deputy First Minister may—
  - (a) make different provision for different cases;
  - (b) contain such incidental, supplemental, consequential and transitional provision as that Office thinks fit.
- (8) The reference in subsection (2) to an addition to Schedule 1 being within the powers of the Office of the First Minister and deputy First Minister includes a reference to its being within the powers exercisable by that Office with the consent for the purposes of subsection (3)(b) of the Secretary of State.
- (9) In this section “excepted matter” and “reserved matter” have the same meanings as in the <sup>M5</sup>Northern Ireland Act 1998; and, in relation to those matters, section 98(2) of that Act (meaning of “deals with”) applies for the purposes of this section as it applies for the purposes of that Act.

#### Textual Amendments

**F2** S. 31(2)(b) repealed (15.11.2001) by [S.I. 2001/3686](#), [art. 6\(17\)\(a\)](#) (with [art. 8](#))

#### Marginal Citations

**M3** [S.I. 1979/1573 \(N.I. 12\)](#).  
**M4** [1954 c. 33 \(N.I.\)](#).  
**M5** [1998 c. 47](#).

## 32 Authorisation of intrusive surveillance.

- (1) Subject to the following provisions of this Part, the Secretary of State and each of the senior authorising officers shall have power to grant authorisations for the carrying out of intrusive surveillance.
- (2) Neither the Secretary of State nor any senior authorising officer shall grant an authorisation for the carrying out of intrusive surveillance unless he believes—
  - (a) that the authorisation is necessary on grounds falling within subsection (3); and
  - (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.
- (3) Subject to the following provisions of this section, an authorisation is necessary on grounds falling within this subsection if it is necessary—
  - (a) in the interests of national security;
  - (b) for the purpose of preventing or detecting serious crime; or
  - (c) in the interests of the economic well-being of the United Kingdom.

<sup>F3</sup>(3A) In the case of an authorisation granted by the chairman of the OFT, the authorisation is necessary on grounds falling within subsection (3) only if it is necessary for the



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purpose of preventing or detecting an offence under section 188 of the Enterprise Act 2002 (cartel offence).]

- (4) 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 the information which it is thought necessary to obtain by the authorised conduct could reasonably be obtained by other means.
- (5) The conduct that is authorised by an authorisation for the carrying out of intrusive surveillance is any conduct that—
- (a) consists in the carrying out of intrusive surveillance of any such description as is specified in the authorisation;
  - (b) is carried out in relation to the residential premises specified or described in the authorisation or in relation to the private vehicle so specified or described; and
  - (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.
- (6) For the purposes of this section the senior authorising officers are—
- (a) the chief constable of every police force maintained under section 2 of the <sup>M6</sup>Police Act 1996 (police forces in England and Wales outside London);
  - (b) the Commissioner of Police of the Metropolis and every Assistant Commissioner of Police of the Metropolis;
  - (c) the Commissioner of Police for the City of London;
  - (d) the chief constable of every police force maintained under or by virtue of section 1 of the <sup>M7</sup>Police (Scotland) Act 1967 (police forces for areas in Scotland);
  - (e) the Chief Constable of the Royal Ulster Constabulary and the Deputy Chief Constable of the Royal Ulster Constabulary;
  - (f) the Chief Constable of the Ministry of Defence Police;
  - (g) the Provost Marshal of the Royal Navy Regulating Branch;
  - (h) the Provost Marshal of the Royal Military Police;
  - (i) the Provost Marshal of the Royal Air Force Police;
  - (j) the Chief Constable of the British Transport Police;
  - (k) the Director General of the National Criminal Intelligence Service;
  - (l) the Director General of the National Crime Squad and 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; and <sup>F4</sup> . . .
  - (m) any customs officer designated for the purposes of this paragraph by the Commissioners of Customs and Excise [<sup>F5</sup>; and
  - (n) the chairman of the OFT.]

#### Textual Amendments

**F3** S. 32(3A) inserted (20.6.2003) by 2002 c. 40, ss. 199(2)(a), 27; S.I. 2003/1397, art. 2(1), Sch.

**F4** Word in s. 32(6)(l) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)

**F5** S. 32(6)(n) and word preceding it inserted (20.6.2003) by 2002 c. 40, ss. 199(2)(b), 279; S.I. 2003/1397, art. 2(1), Sch.

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

- C4** S. 32 modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 4(1)** (with art. 6)
- C5** S. 32: functions transferred to the Scottish Ministers (15.12.2000) by virtue of S.I. 2000/3253 arts. 1(1)(3), 3, Sch. 2 (with art. 6)
- C6** S. 32(6)(m) restricted (18.4.2005) by **Commissioners for Revenue and Customs Act 2005 (c. 11)**, ss. 16, 17, 53(1), **Sch. 2 Pt. 1 para. 11(2)(b)**; S.I. 2005/1126, **art. 2(2)(d)**

#### **Marginal Citations**

- M6** 1996 c. 16.
- M7** 1967 c. 77.

### *Police and customs authorisations*

## **33 Rules for grant of authorisations.**

- (1) A person who is a designated person for the purposes of section 28 or 29 by reference to his office, rank or position with a police force, the National Criminal Intelligence Service or the National Crime Squad shall not grant an authorisation under that section except on an application made by a member of the same force, Service or Squad.
- (2) A person who is designated for the purposes of section 28 or 29 by reference to his office, rank or position with the Commissioners of Customs and Excise shall not grant an authorisation under that section except on an application made by a customs officer.
- (3) A person who is a senior authorising officer by reference to a police force, the National Criminal Intelligence Service or the National Crime Squad shall not grant an authorisation for the carrying out of intrusive surveillance except—
  - (a) on an application made by a member of the same force, Service or Squad; and
  - (b) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any residential premises, where those premises are in the area of operation of that force, Service or Squad.
- (4) A person who is a senior authorising officer by virtue of a designation by the Commissioners of Customs and Excise shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by a customs officer.
- [<sup>F6</sup>(4A) The chairman of the OFT shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of the OFT.]
- (5) A single authorisation may combine both—
  - (a) an authorisation granted under this Part by, or on the application of, an individual who is a member of a police force, the National Criminal Intelligence Service or the National Crime Squad, or who is a customs officer [<sup>F7</sup>or the chairman or an officer of the OFT]; and
  - (b) an authorisation given by, or on the application of, that individual under Part III of the <sup>M8</sup>Police Act 1997;

but the provisions of this Act or that Act that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.
- (6) For the purposes of this section—

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- (a) the area of operation of a police force maintained under section 2 of the <sup>M9</sup>Police Act 1996, of the metropolitan police force, of the City of London police force or of a police force maintained under or by virtue of section 1 of the <sup>M10</sup>Police (Scotland) Act 1967 is the area for which that force is maintained;
  - (b) the area of operation of the Royal Ulster Constabulary is Northern Ireland;
  - (c) residential premises are in the area of operation of the Ministry of Defence Police if they are premises where the members of that police force, under section 2 of the <sup>M11</sup>Ministry of Defence Police Act 1987, have the powers and privileges of a constable;
  - (d) residential premises are in the area of operation of the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police if they are premises owned or occupied by, or used for residential purposes by, a person subject to service discipline;
  - (e) the area of operation of the British Transport Police and also of the National Criminal Intelligence Service is the United Kingdom;
  - (f) the area of operation of the National Crime Squad is England and Wales;
- and references in this section to the United Kingdom or to any part or area of the United Kingdom include any adjacent waters within the seaward limits of the territorial waters of the United Kingdom.
- (7) 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>M12</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>M13</sup>Army Act 1955 for the time being applies by virtue of section 209 of that Act; and
  - (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>M14</sup>Air Force Act 1955 for the time being applies by virtue of section 209 of that Act.

#### Textual Amendments

**F6** S. 33(4A) inserted (20.6.2003) by 2002 c. 40, ss. 199(3), 279; S.I. 2003/1397, art. 2(1), Sch.

**F7** Words in s. 33(5)(a) inserted (20.6.2003) by 2002 c. 40, ss. 199(4), 279; S.I. 2003/1397, art. 2(1), Sch.

#### Marginal Citations

**M8** 1997 c. 50.

**M9** 1996 c. 16.

**M10** 1967 c. 77.

**M11** 1987 c. 4.

**M12** 1957 c. 53.

**M13** 1955 c. 18.

**M14** 1955 c. 19.

## 34 Grant of authorisations in the senior officer's absence.

- (1) This section applies in the case of an application for an authorisation for the carrying out of intrusive surveillance where—

*Status: Point in time view as at 01/04/2005.*

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- (a) the application is one made by a member of a police force, of the National Criminal Intelligence Service or of the National Crime Squad or by [<sup>F8</sup>an officer of the OFT or]a customs officer; and
  - (b) the case is urgent.
- (2) If —
- (a) it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by any person who is a senior authorising officer by reference to the force, Service or Squad in question or, as the case may be, [<sup>F9</sup>as chairman of the OFT or]by virtue of a designation by the Commissioners of Customs and Excise, and
  - (b) it also not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a person (if there is one) who is entitled, as a designated deputy of a senior authorising officer, to exercise the functions in relation to that application of such an officer,
- the application may be made to and considered by any person who is entitled under subsection (4) to act for any senior authorising officer who would have been entitled to consider the application.
- (3) A person who considers an application under subsection (1) shall have the same power to grant an authorisation as the person for whom he is entitled to act.
- (4) For the purposes of this section—
- (a) a person is entitled to act for the chief constable of a police force maintained under section 2 of the <sup>M15</sup>Police Act 1996 if he holds the rank of assistant chief constable in that force;
  - (b) a person is entitled to act for the Commissioner of Police of the Metropolis, or for an Assistant Commissioner of Police of the Metropolis, if he holds the rank of commander in the metropolitan police force;
  - (c) a person is entitled to act for the Commissioner of Police for the City of London if he holds the rank of commander in the City of London police force;
  - (d) a person is entitled to act for the chief constable of a police force maintained under or by virtue of section 1 of the <sup>M16</sup>Police (Scotland) Act 1967 if he holds the rank of assistant chief constable in that force;
  - (e) a person is entitled to act for the Chief Constable of the Royal Ulster Constabulary, or for the Deputy Chief Constable of the Royal Ulster Constabulary, if he holds the rank of assistant chief constable in the Royal Ulster Constabulary;
  - (f) a person is entitled to act for the Chief Constable of the Ministry of Defence Police if he holds the rank of deputy or assistant chief constable in that force;
  - (g) a person is entitled to act for the Provost Marshal of the Royal Navy Regulating Branch if he holds the position of assistant Provost Marshal in that Branch;
  - (h) a person is entitled to act for the Provost Marshal of the Royal Military Police or the Provost Marshal of the Royal Air Force Police if he holds the position of deputy Provost Marshal in the police force in question;
  - (i) a person is entitled to act for the Chief Constable of the British Transport Police if he holds the rank of deputy or assistant chief constable in that force;
  - (j) a person is entitled to act for the Director General of the National Criminal Intelligence Service if he is a person designated for the purposes of this paragraph by that Director General;

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- (k) a person is entitled to act for the Director General of the National Crime Squad if he is designated for the purposes of this paragraph by that Director General as a person entitled so to act in an urgent case;
  - (l) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation by the Commissioners of Customs and Excise, if he is designated for the purposes of this paragraph by those Commissioners as a person entitled so to act in an urgent case.
  - [<sup>F10</sup>(m) a person is entitled to act for the chairman of the OFT if he is an officer of the OFT designated by it for the purposes of this paragraph as a person entitled so to act in an urgent case.]
- (5) A police member of the National Criminal Intelligence Service or the National Crime Squad appointed under section 9(1)(b) or 55(1)(b) of the <sup>M17</sup>Police Act 1997 (police members) may not be designated under subsection (4)(j) or (k) unless he holds the rank of assistant chief constable in that Service or Squad.
- (6) In this section “designated deputy”—
- (a) in relation to a chief constable, means a person holding the rank of assistant chief constable who is designated to act under section 12(4) of the <sup>M18</sup>Police Act 1996 or section 5(4) of the <sup>M19</sup>Police (Scotland) Act 1967;
  - (b) in relation to the Commissioner of Police for the City of London, means a person authorised to act under section 25 of the <sup>M20</sup>City of London Police Act 1839;
  - (c) in relation to the Director General of the National Criminal Intelligence Service or the Director General of the National Crime Squad, means a person designated to act under section 8 or, as the case may be, section 54 of the <sup>M21</sup>Police Act 1997.

#### Textual Amendments

- F8** Words in s. 34(1)(a) inserted (20.6.2003) by 2002 c. 40, ss. 199(5)(a), 279; S.I. 2003/1397, art. 2(1), Sch.
- F9** Words in s. 34(2)(a) inserted (20.6.2003) by 2002 c. 40, ss. 199(5)(b), 279; S.I. 2003/1397, art. 2(1), Sch.
- F10** S. 34(4)(m) inserted (20.6.2003) by 2002 c. 40, ss. 199(5)(c), 279; S.I. 2003/1397, art. 2(1), Sch.

#### Marginal Citations

- M15** 1996 c. 16.  
**M16** 1967 c. 77.  
**M17** 1997 c. 50.  
**M18** 1996 c. 16.  
**M19** 1967 c. 77.  
**M20** 1839 c. xciv.  
**M21** 1997 c. 50.

### 35 Notification of authorisations for intrusive surveillance.

- (1) Where a person grants or cancels a police [<sup>F11</sup>, customs or OFT] authorisation for the carrying out of intrusive surveillance, he shall give notice that he has done so to an ordinary Surveillance Commissioner.
- (2) A notice given for the purposes of subsection (1)—

*Status: Point in time view as at 01/04/2005.*

**Changes to legislation:** *Regulation of Investigatory Powers Act 2000, Part II is up to date with all changes known to be in force on or before 18 May 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)*

- (a) must be given in writing as soon as reasonably practicable after the grant or, as the case may be, cancellation of the authorisation to which it relates;
  - (b) must be given in accordance with any such arrangements made for the purposes of this paragraph by the Chief Surveillance Commissioner as are for the time being in force; and
  - (c) must specify such matters as the Secretary of State may by order prescribe.
- (3) A notice under this section of the grant of an authorisation shall, as the case may be, either—
- (a) state that the approval of a Surveillance Commissioner is required by section 36 before the grant of the authorisation will take effect; or
  - (b) state that the case is one of urgency and set out the grounds on which the case is believed to be one of urgency.
- (4) Where a notice for the purposes of subsection (1) of the grant of an authorisation has been received by an ordinary Surveillance Commissioner, he shall, as soon as practicable—
- (a) scrutinise the authorisation; and
  - (b) in a case where notice has been given in accordance with subsection (3)(a), decide whether or not to approve the authorisation.
- (5) Subject to subsection (6), the Secretary of State shall not make an order under subsection (2)(c) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (6) Subsection (5) does not apply in the case of the order made on the first occasion on which the Secretary of State exercises his power to make an order under subsection (2)(c).
- (7) The order made on that occasion shall cease to have effect at the end of the period of forty days beginning with the day on which it was made unless, before the end of that period, it has been approved by a resolution of each House of Parliament.
- (8) For the purposes of subsection (7)—
- (a) the order's ceasing to have effect shall be without prejudice to anything previously done or to the making of a new order; and
  - (b) in reckoning the period of forty days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (9) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.
- (10) In this section references to a police [<sup>F11</sup>, customs or OFT] authorisation are references to an authorisation granted by—
- (a) a person who is a senior authorising officer by reference to a police force, the National Criminal Intelligence Service or the National Crime Squad;
  - (b) a person who is a senior authorising officer by virtue of a designation by the Commissioners of Customs and Excise;<sup>F12</sup> . . .
  - <sup>F13</sup>(ba) the chairman of the OFT; or]
  - (c) a person who for the purposes of section 34 is entitled to act for a person falling within paragraph (a) or for a person falling within paragraph (b) [<sup>F14</sup> or for a person falling within paragraph (ba)].

*Status: Point in time view as at 01/04/2005.*

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#### Textual Amendments

- F11** Words in s. 35(1)(10) substituted (20.6.2003) by 2002 c. 40, ss. 199(6)(a), 279; S.I. 2003/1397, **art. 2(1)**, Sch.
- F12** Word in s. 35(10)(b) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, **art. 2(1)**, Sch. (with **art. 10**)
- F13** S. 35(10)(ba) inserted (20.6.2003) by 2002 c. 40, ss. 199(6)(b), 279; S.I. 2003/1397, **art. 2(1)**, Sch.
- F14** Words in s. 35(10)(c) inserted (20.6.2003) by 2002 c. 40, ss. 199(6)(c), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

### 36 Approval required for authorisations to take effect.

- (1) This section applies where an authorisation for the carrying out of intrusive surveillance has been granted on the application of—
- a member of a police force;
  - a member of the National Criminal Intelligence Service;
  - a member of the National Crime Squad; [<sup>F15</sup>or]
  - a customs officer [<sup>F16</sup>; or.
  - an officer of the OFT.]
- (2) Subject to subsection (3), the authorisation shall not take effect until such time (if any) as—
- the grant of the authorisation has been approved by an ordinary Surveillance Commissioner; and
  - written notice of the Commissioner’s decision to approve the grant of the authorisation has been given, in accordance with subsection (4), to the person who granted the authorisation.
- (3) Where the person who grants the authorisation—
- believes that the case is one of urgency, and
  - gives notice in accordance with section 35(3)(b),
- subsection (2) shall not apply to the authorisation, and the authorisation shall have effect from the time of its grant.
- (4) Where subsection (2) applies to the authorisation—
- a Surveillance Commissioner shall give his approval under this section to the authorisation if, and only if, he is satisfied that there are reasonable grounds for believing that the requirements of section 32(2)(a) and (b) are satisfied in the case of the authorisation; and
  - a Surveillance Commissioner who makes a decision as to whether or not the authorisation should be approved shall, as soon as reasonably practicable after making that decision, give written notice of his decision to the person who granted the authorisation.
- (5) If an ordinary Surveillance Commissioner decides not to approve an authorisation to which subsection (2) applies, he shall make a report of his findings to the most senior relevant person.
- (6) In this section “the most senior relevant person” means—
- where the authorisation was granted by the senior authorising officer with any police force who is not someone’s deputy, that senior authorising officer;

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- (b) where the authorisation was granted by the Director General of the National Criminal Intelligence Service or the Director General of the National Crime Squad, that Director General;
  - (c) where the authorisation was granted by a senior authorising officer with a police force who is someone’s deputy, the senior authorising officer whose deputy granted the authorisation;
  - (d) where the authorisation was granted by the designated deputy of the Director General of the National Criminal Intelligence Service or a person entitled to act for him by virtue of section 34(4)(j), that Director General;
  - (e) where the authorisation was granted by the designated deputy of the Director General of the National Crime Squad or by a person designated by that Director General for the purposes of section 32(6)(l) or 34(4)(k), that Director General;
  - (f) where the authorisation was granted by a person entitled to act for a senior authorising officer under section 34(4)(a) to (i), the senior authorising officer in the force in question who is not someone’s deputy; <sup>[F17]</sup>and]
  - (g) where the authorisation was granted by a customs officer, the customs officer for the time being designated for the purposes of this paragraph by a written notice given to the Chief Surveillance Commissioner by the Commissioners of Customs and Excise <sup>[F18]</sup>; and.
  - (h) where the authorisation was granted by the chairman of the OFT or a person entitled to act for him by virtue of section 34(4)(m), that chairman.]
- (7) The references in subsection (6) to a person’s deputy are references to the following—
- (a) in relation to—
    - (i) a chief constable of a police force maintained under section 2 of the <sup>M22</sup>Police Act 1996,
    - (ii) the Commissioner of Police for the City of London, or
    - (iii) a chief constable of a police force maintained under or by virtue of section 1 of the <sup>M23</sup>Police (Scotland) Act 1967,
 to his designated deputy;
  - (b) in relation to the Commissioner of Police of the Metropolis, to an Assistant Commissioner of Police of the Metropolis; and
  - (c) in relation to the Chief Constable of the Royal Ulster Constabulary, to the Deputy Chief Constable of the Royal Ulster Constabulary;
- and in this subsection and that subsection “designated deputy” has the same meaning as in section 34.
- (8) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.

#### Textual Amendments

- F15** Word in s. 36(1)(c) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)
- F16** S. 36(1)(e) and word preceding it inserted (20.6.2003) by 2002 c. 40, ss. 199(7)(a), 279; S.I. 2003/1397, art. 2(1), Sch.
- F17** Word in s. 36(6)(f) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)
- F18** S. 36(6)(h) and word preceding it inserted (20.6.2003) by 2002 c. 40, ss. 199(7)(b), 279; S.I. 2003/1397, art. 2(1), Sch.



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#### **Marginal Citations**

**M22** 1996 c. 16.

**M23** 1967 c. 77.

### **37 Quashing of police and customs authorisations etc.**

- (1) This section applies where an authorisation for the carrying out of intrusive surveillance has been granted on the application of—
  - (a) a member of a police force;
  - (b) a member of the National Criminal Intelligence Service;
  - (c) a member of the National Crime Squad; [<sup>F19</sup>or]
  - (d) a customs officer [<sup>F20</sup>; or.
  - (e) an officer of the OFT.]
- (2) Where an ordinary Surveillance Commissioner is at any time satisfied that, at the time when the authorisation was granted or at any time when it was renewed, there were no reasonable grounds for believing that the requirements of section 32(2)(a) and (b) were satisfied, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.
- (3) If an ordinary Surveillance Commissioner is satisfied at any time while the authorisation is in force that there are no longer any reasonable grounds for believing that the requirements of section 32(2)(a) and (b) are satisfied in relation to the authorisation, he may cancel the authorisation with effect from such time as appears to him to be the time from which those requirements ceased to be so satisfied.
- (4) Where, in the case of any authorisation of which notice has been given in accordance with section 35(3)(b), an ordinary Surveillance Commissioner is at any time satisfied that, at the time of the grant or renewal of the authorisation to which that notice related, there were no reasonable grounds for believing that the case was one of urgency, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.
- (5) Subject to subsection (7), where an ordinary Surveillance Commissioner quashes an authorisation under this section, he may order the destruction of any records relating wholly or partly to information obtained by the authorised conduct after the time from which his decision takes effect.
- (6) Subject to subsection (7), where—
  - (a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (2) or (4)), and
  - (b) an ordinary Surveillance Commissioner is satisfied that there was a time while the authorisation was in force when there were no reasonable grounds for believing that the requirements of section 32(2)(a) and (b) continued to be satisfied in relation to the authorisation,he may order the destruction of any records relating, wholly or partly, to information obtained at such a time by the authorised conduct.
- (7) No order shall be made under this section for the destruction of any records required for pending criminal or civil proceedings.

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- (8) Where an ordinary Surveillance Commissioner exercises a power conferred by this section, he shall, as soon as reasonably practicable, make a report of his exercise of that power, and of his reasons for doing so—
- (a) to the most senior relevant person (within the meaning of section 36); and
  - (b) to the Chief Surveillance Commissioner.
- (9) Where an order for the destruction of records is made under this section, the order shall not become operative until such time (if any) as—
- (a) the period for appealing against the decision to make the order has expired; and
  - (b) any appeal brought within that period has been dismissed by the Chief Surveillance Commissioner.
- (10) No notice shall be required to be given under section 35(1) in the case of a cancellation under subsection (3) of this section.

#### **Textual Amendments**

**F19** Word in s. 37(1)(c) repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, art. 2(1), Sch. (with art. 10)

**F20** S. 37(1)(e) and word preceding it inserted (20.6.2003) by 2002 c. 40, ss. 199(8), 279; S.I. 2003/1397, art. 2(1), Sch.

### **38 Appeals against decisions by Surveillance Commissioners.**

- (1) Any senior authorising officer may appeal to the Chief Surveillance Commissioner against any of the following—
- (a) any refusal of an ordinary Surveillance Commissioner to approve an authorisation for the carrying out of intrusive surveillance;
  - (b) any decision of such a Commissioner to quash or cancel such an authorisation;
  - (c) any decision of such a Commissioner to make an order under section 37 for the destruction of records.
- (2) In the case of an authorisation granted by the designated deputy of a senior authorising officer or by a person who for the purposes of section 34 is entitled to act for a senior authorising officer, that designated deputy or person shall also be entitled to appeal under this section.
- (3) An appeal under this section must be brought within the period of seven days beginning with the day on which the refusal or decision appealed against is reported to the appellant.
- (4) Subject to subsection (5), the Chief Surveillance Commissioner, on an appeal under this section, shall allow the appeal if—
- (a) he is satisfied that there were reasonable grounds for believing that the requirements of section 32(2)(a) and (b) were satisfied in relation to the authorisation at the time in question; and
  - (b) he is not satisfied that the authorisation is one of which notice was given in accordance with section 35(3)(b) without there being any reasonable grounds for believing that the case was one of urgency.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Regulation of Investigatory Powers Act 2000, Part II is up to date with all changes known to be in force on or before 18 May 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)*

- (5) If, on an appeal falling within subsection (1)(b), the Chief Surveillance Commissioner—
- (a) is satisfied that grounds exist which justify the quashing or cancellation under section 37 of the authorisation in question, but
  - (b) considers that the authorisation should have been quashed or cancelled from a different time from that from which it was quashed or cancelled by the ordinary Surveillance Commissioner against whose decision the appeal is brought,
- he may modify that Commissioner’s decision to quash or cancel the authorisation, and any related decision for the destruction of records, so as to give effect to the decision under section 37 that he considers should have been made.
- (6) Where, on an appeal under this section against a decision to quash or cancel an authorisation, the Chief Surveillance Commissioner allows the appeal he shall also quash any related order for the destruction of records relating to information obtained by the authorised conduct.
- (7) In this section “designated deputy” has the same meaning as in section 34.

### **39 Appeals to the Chief Surveillance Commissioner: supplementary.**

- (1) Where the Chief Surveillance Commissioner has determined an appeal under section 38, he shall give notice of his determination to both—
- (a) the person by whom the appeal was brought; and
  - (b) the ordinary Surveillance Commissioner whose decision was appealed against.
- (2) Where the determination of the Chief Surveillance Commissioner on an appeal under section 38 is a determination to dismiss the appeal, the Chief Surveillance Commissioner shall make a report of his findings—
- (a) to the persons mentioned in subsection (1); and
  - (b) to the Prime Minister.
- (3) Subsections (3) and (4) of section 107 of the <sup>M24</sup>Police Act 1997 (reports to be laid before Parliament and exclusion of matters from the report) apply in relation to any report to the Prime Minister under subsection (2) of this section as they apply in relation to any report under subsection (2) of that section.
- (4) Subject to subsection (2) of this section, the Chief Surveillance Commissioner shall not give any reasons for any determination of his on an appeal under section 38.

#### **Marginal Citations**

**M24** 1997 c. 50.

### **40 Information to be provided to Surveillance Commissioners.**

- It shall be the duty of—
- (a) every member of a police force,
  - (b) every member of the National Criminal Intelligence Service,
  - (c) every member of the National Crime Squad, and

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- (d) every customs officer [<sup>F21</sup>], and,
- (e) every officer of the OFT,]

to comply with any request of a Surveillance Commissioner for documents or information required by that Commissioner for the purpose of enabling him to carry out the functions of such a Commissioner under sections 35 to 39.

#### **Textual Amendments**

**F21** S. 40(e) and word preceding it inserted (20.6.2003) by 2002 c. 40, ss. 199(9), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

#### *Other authorisations*

#### **41 Secretary of State authorisations.**

- (1) The Secretary of State shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by—
  - (a) a member of any of the intelligence services;
  - (b) an official of the Ministry of Defence;
  - (c) a member of Her Majesty’s forces;
  - (d) an individual holding an office, rank or position with any such public authority as may be designated for the purposes of this section as an authority whose activities may require the carrying out of intrusive surveillance.
- (2) Section 32 shall have effect in relation to the grant of an authorisation by the Secretary of State on the application of an official of the Ministry of Defence, or of a member of Her Majesty’s forces, as if the only matters mentioned in subsection (3) of that section were—
  - (a) the interests of national security; and
  - (b) the purpose of preventing or detecting serious crime.
- (3) The designation of any public authority for the purposes of this section shall be by order made by the Secretary of State.
- (4) The Secretary of State may by order provide, in relation to any public authority, that an application for an authorisation for the carrying out of intrusive surveillance may be made by an individual holding an office, rank or position with that authority only where his office, rank or position is one prescribed by the order.
- (5) The Secretary of State may by order impose restrictions—
  - (a) on the authorisations for the carrying out of intrusive surveillance that may be granted on the application of an individual holding an office, rank or position with any public authority designated for the purposes of this section; and
  - (b) on the circumstances in which, or the purposes for which, such authorisations may be granted on such an application.
- (6) The Secretary of State shall not make a designation under subsection (3) unless a draft of the order containing the designation has been laid before Parliament and approved by a resolution of each House.

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*Changes to legislation: Regulation of Investigatory Powers Act 2000, Part II is up to date with all changes known to be in force on or before 18 May 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) References in this section to a member of Her Majesty’s forces do not include references to any member of Her Majesty’s forces who is a member of a police force by virtue of his service with the Royal Navy Regulating Branch, the Royal Military Police or the Royal Air Force Police.

## 42 Intelligence services authorisations.

- (1) The grant by the Secretary of State [<sup>F22</sup>or, the Scottish Ministers (by virtue of provision under section 63 of the Scotland Act 1998)] on the application of a member of one of the intelligence services of any authorisation under this Part must be made by the issue of a warrant.
- (2) A single warrant issued by the Secretary of State [<sup>F22</sup>or, the Scottish Ministers (by virtue of provision under s. 63 of the Scotland Act 1998)] may combine both—
- (a) an authorisation under this Part; and
  - (b) an intelligence services warrant;
- but the provisions of this Act or the <sup>M25</sup>Intelligence Services Act 1994 that are applicable in the case of the authorisation under this Part or the intelligence services warrant shall apply separately in relation to the part of the combined warrant to which they are applicable.
- (3) Intrusive surveillance in relation to any premises or vehicle in the British Islands shall be capable of being authorised by a warrant issued under this Part on the application of a member of the Secret Intelligence Service or GCHQ only if the authorisation contained in the warrant is one satisfying the requirements of section 32(2)(a) otherwise than in connection with any functions of that intelligence service in support of the prevention or detection of serious crime.
- (4) Subject to subsection (5), the functions of the Security Service shall include acting on behalf of the Secret Intelligence Service or GCHQ in relation to—
- (a) the application for and grant of any authorisation under this Part in connection with any matter within the functions of the Secret Intelligence Service or GCHQ; and
  - (b) the carrying out, in connection with any such matter, of any conduct authorised by such an authorisation.
- (5) Nothing in subsection (4) shall authorise the doing of anything by one intelligence service on behalf of another unless—
- (a) it is something which either the other service or a member of the other service has power to do; and
  - (b) it is done otherwise than in connection with functions of the other service in support of the prevention or detection of serious crime.
- (6) In this section “intelligence services warrant” means a warrant under section 5 of the <sup>M26</sup>Intelligence Services Act 1994.

### Textual Amendments

**F22** Words in s 42(1)(2) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), **Sch. 3 Pt. II para. 7(a)(b)** (with art. 6)

*Status: Point in time view as at 01/04/2005.*

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

- C7** S. 42 modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, **Sch. 1 para. 4(1)** (with art. 6)  
**C8** S. 42: functions transferred to the Scottish Ministers (S.) (15.12.2000) by virtue of S.I. 2000/3253, arts. 1(1)(3), 3, **Sch. 2** (with art. 6)

**Marginal Citations**

- M25** 1994 c. 13.  
**M26** 1994 c. 13.

*Grant, renewal and duration of authorisations*

**43 General rules about grant, renewal and duration.**

- (1) An authorisation under this Part—
  - (a) may be granted or renewed orally in any urgent case in which the entitlement to act of the person granting or renewing it is not confined to urgent cases; and
  - (b) in any other case, must be in writing.
- (2) A single authorisation may combine two or more different authorisations under this Part; but the provisions of this Act that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.
- (3) Subject to subsections (4) and (8), an authorisation under this Part shall cease to have effect at the end of the following period—
  - (a) in the case of an authorisation which—
    - (i) has not been renewed and was granted either orally or by a person whose entitlement to act is confined to urgent cases, or
    - (ii) was last renewed either orally or by such a person,
 the period of seventy-two hours beginning with the time when the grant of the authorisation or, as the case may be, its latest renewal takes effect;
  - (b) in a case not falling within paragraph (a) in which the authorisation is for the conduct or the use of a covert human intelligence source, the period of twelve months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect; and
  - (c) in any case not falling within paragraph (a) or (b), the period of three months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect.
- (4) Subject to subsection (6), an authorisation under this Part may be renewed, at any time before the time at which it ceases to have effect, by any person who would be entitled to grant a new authorisation in the same terms.
- (5) Sections 28 to 41 shall have effect in relation to the renewal of an authorisation under this Part as if references to the grant of an authorisation included references to its renewal.
- (6) A person shall not renew an authorisation for the conduct or the use of a covert human intelligence source, unless he—
  - (a) is satisfied that a review has been carried out of the matters mentioned in subsection (7); and

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- (b) has, for the purpose of deciding whether he should renew the authorisation, considered the results of that review.
- (7) The matters mentioned in subsection (6) are—
- (a) the use made of the source in the period since the grant or, as the case may be, latest renewal of the authorisation; and
- (b) the tasks given to the source during that period and the information obtained from the conduct or the use of the source.
- (8) The Secretary of State may by order provide in relation to authorisations of such descriptions as may be specified in the order that subsection (3) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by that subsection as may be fixed by or determined in accordance with that order.
- (9) References in this section to the time at which, or the day on which, the grant or renewal of an authorisation takes effect are references—
- (a) in the case of the grant of an authorisation to which paragraph (c) does not apply, to the time at which or, as the case may be, day on which the authorisation is granted;
- (b) in the case of the renewal of an authorisation to which paragraph (c) does not apply, to the time at which or, as the case may be, day on which the authorisation would have ceased to have effect but for the renewal; and
- (c) in the case of any grant or renewal that takes effect under subsection (2) of section 36 at a time or on a day later than that given by paragraph (a) or (b), to the time at which or, as the case may be, day on which the grant or renewal takes effect in accordance with that subsection.
- (10) In relation to any authorisation granted by a member of any of the intelligence services, and in relation to any authorisation contained in a warrant issued by the Secretary of State on the application of a member of any of the intelligence services, this section has effect subject to the provisions of section 44.

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

- C9** S. 43(3) modified (6.11.2000) by [S.I. 2000/2793](#), [art. 6](#) (as amended (10.8.2021 for specified purposes, 15.9.2021 for specified purposes, 30.9.2021 in so far as not already in force) by [Covert Human Intelligence Sources \(Criminal Conduct\) Act 2021 \(c. 4\)](#), [ss. 2\(7\)](#), [9\(2\)](#) (with [s. 2\(9\)](#)); [S.I. 2021/605](#), [reg. 2\(a\)\(b\)\(c\)](#))
- S.43 applied (with modifications) (16.3.2001) by [S.I. 2001/1057](#), [art. 4](#)
- C10** S. 43(3) modified (1.2.2010) by [The Regulation of Investigatory Powers \(Covert Human Intelligence Sources: Matters Subject to Legal Privilege\) Order 2009 \(S.I. 2009/3404\)](#), [art. 8](#)
- C11** S. 43(3) modified (18.2.2010) by [The Regulation of Investigatory Powers \(Covert Human Intelligence Sources: Matters Subject to Legal Privilege\) Order 2010 \(S.I. 2010/123\)](#), [art. 8](#)

**44 Special rules for intelligence services authorisations.**

- (1) Subject to subsection (2), a warrant containing an authorisation for the carrying out of intrusive surveillance—
- (a) shall not be issued on the application of a member of any of the intelligence services, and
- (b) if so issued shall not be renewed,

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except under the hand of the Secretary of State [<sup>F23</sup>or, in the case of a warrant issued by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), a member of the Scottish Executive.]

(2) In an urgent case in which—

- (a) an application for a warrant containing an authorisation for the carrying out of intrusive surveillance has been made by a member of any of the intelligence services, and
- (b) the Secretary of State has himself [<sup>F24</sup>or the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) have themselves] expressly authorised the issue of the warrant in that case,

the warrant may be issued (but not renewed) under the hand of a senior official [<sup>F25</sup>or as the case may be, a member of the staff of the Scottish Administration who is a member of the Senior Civil Service and is designated by the Scottish Ministers as a person under whose hand a warrant may be issued in such a case (in this section referred to as “a designated official”)]

(3) Subject to subsection (6), a warrant containing an authorisation for the carrying out of intrusive surveillance which—

- (a) was issued, on the application of a member of any of the intelligence services, under the hand of a senior official [<sup>F26</sup>or, as the case may be, a designated official] and
- (b) has not been renewed under the hand of the Secretary of State [<sup>F27</sup>or, in the case of a warrant issued by the Scottish Ministers (by virtue of provision made under section 3 of the Scotland Act 1998), a member of the Scottish Executive],

shall cease to have effect at the end of the second working day following the day of the issue of the warrant, instead of at the time provided for by section 43(3).

(4) Subject to subsections (3) and (6), where any warrant for the carrying out of intrusive surveillance which is issued or was last renewed on the application of a member of any of the intelligence services, the warrant (unless renewed or, as the case may be, renewed again) shall cease to have effect at the following time, instead of at the time provided for by section 43(3), namely—

- (a) in the case of a warrant that has not been renewed, at the end of the period of six months beginning with the day on which it was issued; and
- (b) in any other case, at the end of the period of six months beginning with the day on which it would have ceased to have effect if not renewed again.

(5) Subject to subsection (6), where—

- (a) an authorisation for the carrying out of directed surveillance is granted by a member of any of the intelligence services, and
- (b) the authorisation is renewed by an instrument endorsed under the hand of the person renewing the authorisation with a statement that the renewal is believed to be necessary on grounds falling within section 32(3)(a) or (c),

the authorisation (unless renewed again) shall cease to have effect at the end of the period of six months beginning with the day on which it would have ceased to have effect but for the renewal, instead of at the time provided for by section 43(3).

(6) The Secretary of State may by order provide in relation to authorisations of such descriptions as may be specified in the order that subsection (3), (4) or (5) is to have effect as if the period at the end of which an authorisation of a description so specified



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is to cease to have effect were such period shorter than that provided for by that subsection as may be fixed by or determined in accordance with that order.

(7) Notwithstanding anything in section 43(2), in a case in which there is a combined warrant containing both—

- (a) an authorisation for the carrying out of intrusive surveillance, and
- (b) an authorisation for the carrying out of directed surveillance,

the reference in subsection (4) of this section to a warrant for the carrying out of intrusive surveillance is a reference to the warrant so far as it confers both authorisations.

#### Textual Amendments

- F23** Words in s. 44(1) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), Sch. 3 Pt. II para. 8(a) (with art. 6)
- F24** Words in s. 44(2) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), Sch. 3 Pt. II para. 8(b) (i) (with art. 6)
- F25** Words inserted at the end of s. 44(2) (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), Sch. 3 Pt. II para. 8(b)(ii) (with art. 6)
- F26** Words in s. 44(3)(a) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), Sch. 3 Pt. II para. 8(c)(i) (with art. 6)
- F27** Words in s. 44(3)(b) inserted (S.) (15.12.2000) by S.I. 2000/3253, arts. 1(1), 4(1), Sch. 3 Pt. II para. 8(c)(ii) (with art. 6)

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

- C12** S. 44(1)(2)(b) modified (S.) (14.12.2000) by S.I. 2000/3253, arts. 1(1)(2), 2, Sch. 1 para. 5 (with art. 6)
- C13** S. 44(1)(2)(b): functions transferred to the Scottish Ministers (S.) (15.12.2000) by virtue of S.I. 2000/3253, arts. 1(1)(3), 3, Sch. 2 (with art. 6)

## 45 Cancellation of authorisations.

(1) The person who granted or, as the case may be, last renewed an authorisation under this Part shall cancel it if—

- (a) he is satisfied that the authorisation is one in relation to which the requirements of section 28(2)(a) and (b), 29(2)(a) and (b) or, as the case may be, 32(2)(a) and (b) are no longer satisfied; or
- (b) in the case of an authorisation under section 29, he is satisfied that arrangements for the source's case that satisfy the requirements mentioned in subsection (2)(c) of that section no longer exist.

(2) Where an authorisation under this Part was granted or, as the case may be, last renewed—

- (a) by a person entitled to act for any other person, or
- (b) by the deputy of any other person,

that other person shall cancel the authorisation if he is satisfied as to either of the matters mentioned in subsection (1).

- (3) Where an authorisation under this Part was granted or, as the case may be, last renewed by a person whose deputy had power to grant it, that deputy shall cancel the authorisation if he is satisfied as to either of the matters mentioned in subsection (1).

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- (4) The Secretary of State may by regulations provide for the person by whom any duty imposed by this section is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it.
- (5) Regulations under subsection (4) may provide for the person on whom the duty is to fall to be a person appointed in accordance with the regulations.
- (6) The references in this section to a person’s deputy are references to the following—
- (a) in relation to—
    - (i) a chief constable of a police force maintained under section 2 of the <sup>M27</sup>Police Act 1996,
    - (ii) the Commissioner of Police for the City of London, or
    - (iii) a chief constable of a police force maintained under or by virtue of section 1 of the <sup>M28</sup>Police (Scotland) Act 1967,
 to his designated deputy;
  - (b) in relation to the Commissioner of Police of the Metropolis, to an Assistant Commissioner of Police of the Metropolis;
  - (c) in relation to the Chief Constable of the Royal Ulster Constabulary, to the Deputy Chief Constable of the Royal Ulster Constabulary;
  - (d) in relation to the Director General of the National Criminal Intelligence Service, to his designated deputy; and
  - (e) in relation to the Director General of the National Crime Squad, to any person designated by him for the purposes of section 32(6)(l) or to his designated deputy.
- (7) In this section “designated deputy” has the same meaning as in section 34.

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

**C14** S. 45 applied (with modifications) (16.3.2001) by [S.I. 2001/1057](#), [art. 5](#)

**C15** S. 45(1): functions transferred to the Scottish Ministers (15.12.2000) by virtue of [S.I. 2000/3253](#), [arts. 1\(1\)\(3\), 3](#), [Sch. 2](#) (with [art. 6](#))

**C16** S. 45(1)(a) modified (S.) (14.12.2000) by [S.I. 2000/3253](#), [arts. 1\(1\), 2](#), [Sch. 1 para. 5](#) (with [art. 6](#))

**Marginal Citations**

**M27** 1996 c. 16.

**M28** 1967 c. 77.

*Scotland*

**46 Restrictions on authorisations extending to Scotland.**

- (1) No person shall grant or renew an authorisation under this Part for the carrying out of any conduct if it appears to him—
- (a) that the authorisation is not one for which this Part is the relevant statutory provision for all parts of the United Kingdom; and
  - (b) that all the conduct authorised by the grant or, as the case may be, renewal of the authorisation is likely to take place in Scotland.

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- (2) In relation to any authorisation, this Part is the relevant statutory provision for all parts of the United Kingdom in so far as it—
- (a) is granted or renewed on the grounds that it is necessary in the interests of national security or in the interests of the economic well-being of the United Kingdom;
  - (b) is granted or renewed by or on the application of a person holding any office, rank or position with any of the public authorities specified in subsection (3);
  - (c) authorises conduct of a person holding an office, rank or position with any of the public authorities so specified;
  - (d) authorises conduct of an individual acting as a covert human intelligence source for the benefit of any of the public authorities so specified; or
  - (e) authorises conduct that is surveillance by virtue of section 48(4).
- (3) The public authorities mentioned in subsection (2) are—
- (a) each of the intelligence services;
  - (b) Her Majesty's forces;
  - (c) the Ministry of Defence;
  - (d) the Ministry of Defence Police;
  - <sup>[F28]</sup>(dza) the Civil Nuclear Constabulary;]
  - <sup>[F29]</sup>(da) the OFT;]
  - (e) the Commissioners of Customs and Excise; and
  - (f) the British Transport Police.
- (4) For the purposes of so much of this Part as has effect in relation to any other public authority by virtue of—
- (a) the fact that it is a public authority for the time being specified in Schedule 1, or
  - (b) an order under subsection (1)(d) of section 41 designating that authority for the purposes of that section,

the authorities specified in subsection (3) of this section shall be treated as including that authority to the extent that the Secretary of State by order directs that the authority is a relevant public authority or, as the case may be, is a designated authority for all parts of the United Kingdom.

#### Textual Amendments

- F28** S. 46(3)(dza) inserted (1.4.2005) by [Energy Act 2004 \(c. 20\)](#), ss. 69, 198(2), [Sch. 14 para. 8\(1\)](#); S.I. 2005/877, [art. 2\(1\)](#), [Sch. 1](#)
- F29** S. 46(3)(da) inserted (20.6.2003) by [2002 c. 40](#), ss. 199(10), 279; S.I. 2003/1397, [art. 2\(1\)](#), [Sch.](#)

#### *Supplemental provision for Part II*

#### **47 Power to extend or modify authorisation provisions.**

- (1) The Secretary of State may by order do one or both of the following—
- (a) apply this Part, with such modifications as he thinks fit, to any such surveillance that is neither directed nor intrusive as may be described in the order;

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(b) provide for any description of directed surveillance to be treated for the purposes of this Part as intrusive surveillance.

(2) No order shall be made under this section unless a draft of it has been laid before Parliament and approved by a resolution of each House.

## 48 Interpretation of Part II.

(1) In this Part—

“covert human intelligence source” shall be construed in accordance with section 26(8);

“directed” and “intrusive”, in relation to surveillance, shall be construed in accordance with section 26(2) to (6);

[<sup>F30</sup>“OFT” means the Office of Fair Trading;]

“private vehicle” means (subject to subsection (7)(a)) any vehicle which is used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it;

“residential premises” means (subject to subsection (7)(b)) so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation (including hotel or prison accommodation that is so occupied or used);

“senior authorising officer” means a person who by virtue of subsection (6) of section 32 is a senior authorising officer for the purposes of that section;

“surveillance” shall be construed in accordance with subsections (2) to (4);

“surveillance device” means any apparatus designed or adapted for use in surveillance.

(2) Subject to subsection (3), in this Part “surveillance” includes—

(a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;

(b) recording anything monitored, observed or listened to in the course of surveillance; and

(c) surveillance by or with the assistance of a surveillance device.

(3) References in this Part to surveillance do not include references to—

(a) any conduct of a covert human intelligence source for obtaining or recording (whether or not using a surveillance device) any information which is disclosed in the presence of the source;

(b) the use of a covert human intelligence source for so obtaining or recording information; or

(c) any such entry on or interference with property or with wireless telegraphy as would be unlawful unless authorised under—

(i) section 5 of the <sup>M29</sup>Intelligence Services Act 1994 (warrants for the intelligence services); or

(ii) Part III of the <sup>M30</sup>Police Act 1997 (powers of the police and of customs officers).

(4) References in this Part to surveillance include references to the interception of a communication in the course of its transmission by means of a postal service or telecommunication system if, and only if—

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- (a) the communication is one sent by or intended for a person who has consented to the interception of communications sent by or to him; and
  - (b) there is no interception warrant authorising the interception.
- (5) References in this Part to an individual holding an office or position with a public authority include references to any member, official or employee of that authority.
- (6) For the purposes of this Part the activities of a covert human intelligence source which are to be taken as activities for the benefit of a particular public authority include any conduct of his as such a source which is in response to inducements or requests made by or on behalf of that authority.
- (7) In subsection (1)—
- (a) the reference to a person having the right to use a vehicle does not, in relation to a motor vehicle, include a reference to a person whose right to use the vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey; and
  - (b) the reference to premises occupied or used by any person for residential purposes or otherwise as living accommodation does not include a reference to so much of any premises as constitutes any common area to which he has or is allowed access in connection with his use or occupation of any accommodation.
- (8) In this section—
- “premises” includes any vehicle or moveable structure and any other place whatever, whether or not occupied as land;
  - “vehicle” includes any vessel, aircraft or hovercraft.

#### Textual Amendments

**F30** Definition in s. 48(1) inserted (20.6.2003) by 2002 c. 40, ss. 199(11), 279; S.I. 2003/1397, **art. 2(1)**, Sch.

#### Marginal Citations

**M29** 1994 c. 13.

**M30** 1997 c. 50.

**Status:**

Point in time view as at 01/04/2005.

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