



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART II

#### SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES

##### *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<sup>F1</sup> . . . shall not grant an authorisation under that section except on an application made by a member of the same force<sup>F2</sup> . . . .
- [<sup>F3</sup>(1A) A person who is a designated person for the purposes of section 28 or 29 by reference to his office or position with the Serious Organised Crime Agency shall not grant an authorisation under that section except on an application made by a member of the staff of the Agency.]
- (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<sup>F4</sup> . . . 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<sup>F5</sup> . . . ; 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<sup>F5</sup> . . . .
- [<sup>F6</sup>(3A) The Director General of the Serious Organised Crime Agency or a person designated for the purposes of section 32(6)(k) by that Director General shall not grant an

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authorisation for the carrying out of intrusive surveillance except on an application made by a member of the staff of the Agency.]

- (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>F7</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, [<sup>F8</sup>a member of the staff of the Serious Organised Crime Agency,] or who is a customs officer [<sup>F9</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>M1</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—
  - (a) the area of operation of a police force maintained under section 2 of the <sup>M2</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>M3</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>M4</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 <sup>F10</sup>. . . is the United Kingdom;
  - (f) <sup>F11</sup> . . . . .

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>M5</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>M6</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>M7</sup>Air Force Act 1955 for the time being applies by virtue of section 209 of that Act.

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### Textual Amendments

- F1** Words in s. 33(1) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, [Sch. 4 para. 137\(2\)\(a\)](#), [Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))
- F2** Words in s. 33(1) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, [Sch. 4 para. 137\(2\)\(b\)](#), [Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))
- F3** S. 33(1A) inserted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 137\(3\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to [art. 4\(2\)-\(7\)](#))
- F4** Words in s. 33(3) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, [Sch. 4 para. 137\(4\)\(a\)](#), [Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))
- F5** Words in s. 33(3) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, [Sch. 4 para. 137\(4\)\(b\)](#), [Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))
- F6** S. 33(3A) inserted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 137\(5\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to [art. 4\(2\)-\(7\)](#))
- F7** S. 33(4A) inserted (20.6.2003) by [2002 c. 40](#), ss. 199(3), 279; S.I. 2003/1397, [art. 2\(1\)](#), Sch.
- F8** Words in s. 33(5)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 137\(6\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to [art. 4\(2\)-\(7\)](#))
- F9** 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.
- F10** Words in s. 33(6)(e) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, [Sch. 4 para. 137\(7\)\(a\)](#), [Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))
- F11** S. 33(6)(f) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, [Sch. 4 para. 137\(7\)\(b\)](#), [Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))

### Marginal Citations

- M1** 1997 c. 50.  
**M2** 1996 c. 16.  
**M3** 1967 c. 77.  
**M4** 1987 c. 4.  
**M5** 1957 c. 53.  
**M6** 1955 c. 18.  
**M7** 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—
- the application is one made by a member of a police force, [<sup>F12</sup>a member of the staff of the Serious Organised Crime Agency] or by [<sup>F13</sup>an officer of the OFT or] a customs officer; and
  - the case is urgent.
- (2) If —
- 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 [<sup>F14</sup>or Agency] in question or, as the case

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may be, [<sup>F15</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>M8</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>M9</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;
- [<sup>F16</sup>(j) a person is entitled to act for the Director General of the Serious Organised Crime Agency if he is a person 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>F17</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) <sup>F18</sup> .....

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- (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>M10</sup>Police Act 1996 or section 5(4) of the <sup>M11</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>M12</sup>City of London Police Act 1839;
  - (c) <sup>F19</sup> .....

#### Textual Amendments

- F12** Words in s. 34(1)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 178, Sch. 4 para. 138\(2\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F13** 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.
- F14** Words in s. 34(2)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 178, Sch. 4 para. 138\(3\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F15** 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.
- F16** S. 34(4)(j) substituted (1.4.2006) for s. 34(4)(j)(k) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 178, Sch. 4 para. 138\(4\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F17** 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.
- F18** S. 34(5) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 174, 178, Sch. 4 para. 138\(5\), Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to art. 4(2)-(7))
- F19** S. 34(6)(c) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 59, 174, 178, Sch. 4 para. 138\(6\), Sch. 17](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to art. 4(2)-(7))

#### Marginal Citations

- M8** 1996 c. 16.  
**M9** 1967 c. 77.  
**M10** 1996 c. 16.  
**M11** 1967 c. 77.  
**M12** 1839 c. xciv.

### 35 Notification of authorisations for intrusive surveillance.

- (1) Where a person grants or cancels a [<sup>F20</sup>police, SOCA, customs][<sup>F21</sup>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)—
- (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—

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- (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 [<sup>F22</sup>police, SOCA, customs][<sup>F21</sup>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 [<sup>F23</sup>or the Serious Organised Crime Agency] ;
  - (b) a person who is a senior authorising officer by virtue of a designation by the Commissioners of Customs and Excise; [<sup>F24</sup>or]
  - [<sup>F25</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>F26</sup>or for a person falling within paragraph (ba)].

#### Textual Amendments

**F20** Words in s. 35(1) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 139\(2\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))

**F21** 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.

**F22** Words in s. 35(10) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 139\(3\)\(a\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))

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- F23** Words in s. 35(10)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 139\(3\)\(b\)](#); S.I. 2006/378, [art. 4\(1\)](#), [Sch. para. 10](#) (subject to [art. 4\(2\)-\(7\)](#))
- F24** 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. \(with art. 10\)](#)
- F25** 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.](#)
- F26** 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;
  - <sup>F27</sup>(b) a member of the staff of the Serious Organised Crime Agency;
  - a customs officer <sup>F28</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;
  - where the authorisation was granted by the Director General of the <sup>F29</sup>Serious Organised Crime Agency,] that Director General;

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- (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;
- [<sup>F30</sup>(d) where the authorisation was granted by a person designated for the purposes of section 32(6)(k), or by a person entitled to act for the Director General of the Serious Organised Crime Agency by virtue of section 34(4)(j), 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>F31</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>F32</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>M13</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>M14</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

- F27** S. 36(1)(b) substituted (1.4.2006) for s. 36(1)(b)(c) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 140\(2\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to [art. 4\(2\)-\(7\)](#))
- F28** 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.
- F29** Words in s. 36(6)(b) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 140\(3\)\(a\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to [art. 4\(2\)-\(7\)](#))
- F30** S. 36(6)(d) substituted (1.4.2006) for s. 36(6)(d)(e) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 140\(3\)\(b\)](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to [art. 4\(2\)-\(7\)](#))
- F31** 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](#))
- F32** 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**

**M13** 1996 c. 16.

**M14** 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;
  - [<sup>F33</sup>(b) a member of the staff of the Serious Organised Crime Agency;]
  - (d) a customs officer [<sup>F34</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.
- (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—

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- (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**

- F33** S. 37(1)(b) substituted (1.4.2006) for s. 37(1)(b)(c) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 141](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to [art. 4\(2\)-\(7\)](#))
- F34** 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 office 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.
- (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

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- (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>M15</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**

**M15** 1997 c. 50.

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

It shall be the duty of—

- (a) every member of a police force,
- [<sup>F35</sup>(b) every member of the staff of the Serious Organised Crime Agency,]
- (d) every customs officer [<sup>F36</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.

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#### Textual Amendments

- F35** S. 40(b) substituted (1.4.2006) for s. 40(b)(c) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 178, [Sch. 4 para. 142](#); S.I. 2006/378, [art. 4\(1\)](#), Sch. para. 10 (subject to art. 4(2)-(7))
- F36** 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.

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