

Changes to legislation: Investigatory Powers Act 2016, SCHEDULE 7 is up to date with all changes known to be in force on or before 03 September 2023. 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) View outstanding changes

SCHEDULES

SCHEDULE 7

Section 241

CODES OF PRACTICE

Scope of codes

- 1 (1) The Secretary of State must issue one or more codes of practice about the exercise of functions conferred by virtue of this Act.
- (2) Sub-paragraph (1) does not apply in relation to—
 - (a) any functions conferred by virtue of this Act on—
 - (i) the Investigatory Powers Commissioner or any other Judicial Commissioner,
 - (ii) the Information Commissioner,
 - (iii) the Investigatory Powers Tribunal,
 - (iv) any other court or tribunal,
 - (v) the Technical Advisory Board, or
 - (vi) the Technology Advisory Panel,
 - (b) any function to make subordinate legislation which is conferred by virtue of this Act on the Secretary of State or the Treasury.
- (3) A code may, in particular, contain provision about the training of people who may exercise functions in relation to which sub-paragraph (1) applies.

Commencement Information

II Sch. 7 para. 1 in force at 13.2.2017 by S.I. 2017/137, reg. 2(t)

- 2 (1) Each code must include—
 - (a) provision designed to protect the public interest in the confidentiality of sources of journalistic information, and
 - (b) provision about particular considerations applicable to any data which relates to a member of a profession which routinely holds items subject to legal privilege or relevant confidential information.
- (2) A code about the exercise of functions conferred by virtue of Part 2, Part 5 or Chapter 1 or 3 of Part 6 must also contain provision about when circumstances are to be regarded as “exceptional and compelling circumstances” for the purposes of any provision of that Part or Chapter that restricts the exercise of functions in relation to items subject to legal privilege by reference to the existence of such circumstances.
- (3) The Investigatory Powers Commissioner must keep under review any provision included in a code by virtue of sub-paragraph (2).
- (4) In this paragraph—

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“relevant confidential information” means information which is held in confidence by a member of a profession and consists of—

- (a) personal records or journalistic material which are (or would be if held in England and Wales) excluded material as defined by section 11 of the Police and Criminal Evidence Act 1984, or
- (b) communications between Members of Parliament and their constituents,

and the references in this paragraph to a member of a profession include references to any person acting in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office.

Commencement Information

I2 Sch. 7 para. 2 in force at 13.2.2017 by S.I. 2017/137, reg. 2(t)

- 3 (1) A code about the exercise of functions conferred by virtue of Part 3 must contain provision about communications data held by public authorities by virtue of that Part.
- (2) Such provision must, in particular, include provision about—
 - (a) why, how and where the data is held,
 - (b) who may access the data on behalf of the authority,
 - (c) to whom, and under what conditions, the data may be disclosed,
 - (d) the processing of the data for purposes otherwise than in connection with the purposes for which it was obtained or retained,
 - (e) the processing of the data together with other data,
 - (f) the processes for determining how long the data should be held and for the destruction of the data.

Commencement Information

I3 Sch. 7 para. 3 in force at 13.2.2017 by S.I. 2017/137, reg. 2(t)

Procedural requirements

- 4 (1) Before issuing a code the Secretary of State must—
 - (a) prepare and publish a draft of the code, and
 - (b) consider any representations made about it,
 and may modify the draft.
- (2) The Secretary of State must, in particular, consult the Investigatory Powers Commissioner and, in the case of a code relating to the exercise of functions conferred by virtue of Part 4, the Information Commissioner.
- (3) A code comes into force in accordance with regulations made by the Secretary of State.
- (4) A statutory instrument containing such regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) When a draft instrument is laid, the code to which it relates must also be laid.

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- (6) No draft instrument may be laid until the consultation required by sub-paragraphs (1) and (2) has taken place.

Commencement Information

I4 [Sch. 7 para. 4](#) in force at 13.2.2017 by [S.I. 2017/137](#), [reg. 2\(t\)](#)

Revision of codes

- 5 (1) The Secretary of State may from time to time revise the whole or part of a code.
- (2) Before issuing any revision of a code the Secretary of State must—
- (a) prepare and publish a draft, and
 - (b) consider any representations made about it,
- and may modify the draft.
- (3) The Secretary of State must, in particular, consult the Investigatory Powers Commissioner and, in the case of a code relating to the exercise of functions conferred by virtue of Part 4, the Information Commissioner.
- (4) A revision of a code comes into force in accordance with regulations made by the Secretary of State.
- (5) A statutory instrument containing such regulations must be laid before Parliament if the regulations have been made without a draft having been laid before, and approved by a resolution of, each House of Parliament.
- (6) When an instrument or draft instrument is laid, the revision of a code to which it relates must also be laid.
- (7) No instrument or draft instrument may be laid until the consultation required by sub-paragraphs (2) and (3) has taken place.

Commencement Information

I5 [Sch. 7 para. 5](#) in force at 13.2.2017 by [S.I. 2017/137](#), [reg. 2\(t\)](#)

Effect of codes

- 6 (1) A person must have regard to a code when exercising any functions to which the code relates.
- (2) A failure on the part of a person to comply with any provision of a code does not of itself make that person liable to criminal or civil proceedings.
- (3) A code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a person to have regard to a code in determining a question in any such proceedings.
- (5) A supervisory authority exercising functions by virtue of this Act may take into account a failure by a person to have regard to a code in determining a question which arises in connection with the exercise of those functions.

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(6) In this paragraph “supervisory authority” means—

- (a) the Investigatory Powers Commissioner or any other Judicial Commissioner,
- (b) the Information Commissioner, or
- (c) the Investigatory Powers Tribunal.

Commencement Information

I6 [Sch. 7 para. 6](#) in force at 13.2.2017 by [S.I. 2017/137](#), **reg. 2(t)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 3 para. 8A and cross-heading inserted by [2023 c. 32 Sch. 18 para. 10\(2\)](#)
- Sch. 3 para. 20(2)(ha)(hb) inserted by [2023 c. 32 Sch. 18 para. 10\(3\)\(a\)](#)