



# Regulation of Investigatory Powers (Scotland) Act 2000

## 2000 asp 11

### *Supplementary provisions*

#### **27 Power to extend or modify authorisation provisions**

- (1) The Scottish Ministers may by order do one or both of the following—
  - (a) apply this Act, with such modifications as they think fit, to any such surveillance, that is neither directed nor intrusive, as may be described in the order;
  - (b) provide for any description of directed surveillance to be treated for the purposes of this Act as intrusive surveillance.
- (2) No order shall be made under this section unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

#### **28 Orders and regulations**

- (1) This section applies to any power of the Scottish Ministers to make any order or regulations under any provision of this Act.
- (2) The powers to which this section applies shall be exercisable by statutory instrument.
- (3) A statutory instrument containing any order or regulations made in exercise of a power to which this section applies, other than one containing—
  - (a) an order a draft of which has been approved for the purposes of section 8(5), 13(5) or (7), 24(9) and 27(2) above; or
  - (b) an order under section 32(2) below appointing a day,shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An order or regulations made in exercise of a power to which this section applies may—
  - (a) make different provisions for different cases; and
  - (b) contain such incidental, supplemental, consequential and transitional provisions as the Scottish Ministers think fit.

**29 Financial provision**

The Scottish Ministers shall pay to the Secretary of State such amount as is agreed between them to be appropriate to reimburse the expenditure or increased expenditure incurred by the Secretary of State in consequence of this Act.

**30 General saving for lawful conduct**

Nothing in any of the provisions of this Act by virtue of which conduct of any description is or may be authorised, or by virtue of which information may be obtained in any manner, shall be construed—

- (a) as making it unlawful to engage in any conduct of that description which is not otherwise unlawful under this Act and would not be unlawful apart from this Act;
- (b) as otherwise requiring—
  - (i) the issue, grant or giving of such authorisation; or
  - (ii) the taking of any step for or towards obtaining the authority of such authorisation,
 before any such conduct of that description is engaged in; or
- (c) as prejudicing any power to obtain information by any means not involving conduct that may be authorised under this Act.

**31 Interpretation**

(1) In this Act—

“apparatus” includes any equipment, machinery or device and any wire or cable;

“communication” includes—

- (a) anything comprising speech, music, sounds, visual images, or data of any description; and
- (b) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;

“covert human intelligence source” shall be construed in accordance with section 1(7) above;

“directed” and “intrusive”, in relation to surveillance, shall be construed in accordance with section 1(2) to (5) above;

“ordinary Surveillance Commissioner” means a Surveillance Commissioner other than a Chief Surveillance Commissioner;

“police force” means any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967 (c. 77) (police areas);

“private vehicle” means (subject to subsection (9)(a) below) 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 (9)(b) below) 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);

“surveillance” shall be construed in accordance with subsections (2) to (3) below;

“Surveillance Commissioner” means a Commissioner holding office under section 2 above and “Chief Surveillance Commissioner” shall be construed accordingly;

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

“the Tribunal” has the same meaning as in section 23(1) above.

- (2) Subject to subsection (3) below, in this Act “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 Act 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 Part III of the Police Act 1997 (c. 50) (authorisation of interference with property or wireless telegraphy).
- (4) References in this Act to an individual holding an office or position with a public authority include references to any member, official or employee of that authority.
- (5) For the purposes of this Act 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 of that source’s conduct as such a source which is in response to inducements or requests made by or on behalf of that authority.
- (6) In this Act—
- (a) references to crime are references to conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom would constitute one or more criminal offences; and
  - (b) references to serious crime are references to crime that satisfies the test in subsection (7)(a) or (b) below.
- (7) Those tests are—
- (a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more;
  - (b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
- (8) For the purposes of this Act, detecting crime shall be taken to include—
- (a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and
  - (b) the apprehension of the person by whom any crime was committed,

and any reference in this Act to preventing or detecting serious crime shall be construed accordingly.

(9) In subsection (1) above—

- (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 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 the person has or is allowed access in connection with the person's use or occupation of any accommodation.

(10) 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.

## **32 Short title and commencement**

- (1) This Act may be cited as the Regulation of Investigatory Powers (Scotland) Act 2000.
- (2) The provisions of this Act shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed under this subsection for different purposes.