

**2017 No. 859 (C. 72)**

**INVESTIGATORY POWERS**

**The Investigatory Powers Act 2016 (Commencement No. 3 and  
Transitory, Transitional and Saving Provisions) Regulations  
2017**

*Made* - - - -

*29th August 2017*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 270(2) and 272(1) of the Investigatory Powers Act 2016(a)

**PART 1**

**General and commencement**

**Citation and interpretation**

**1.**—(1) These Regulations may be cited as the Investigatory Powers Act 2016 (Commencement No. 3 and Transitory, Transitional and Saving Provisions) Regulations 2017.

(2) In these Regulations—

“the 1997 Act” means the Police Act 1997(b);

“the 2016 Act” means the Investigatory Powers Act 2016;

“the Chief Surveillance Commissioner”, “the other Surveillance Commissioners”, “the Scottish Chief Surveillance Commissioner” and “the other Scottish Surveillance Commissioners” have the same meaning as in section 240 of the 2016 Act;

“RIPA” means the Regulation of Investigatory Powers Act 2000(c);

“RIPSA” means the Regulation of Investigatory Powers (Scotland) Act 2000(d).

**Appointed day**

**2.** The following provisions of the 2016 Act come into force on 1st September 2017—

(a) the definition of “related systems data” in section 15(6) (warrants that may be issued under this Chapter) for the purpose of the definition of “related systems data” in section 229(9) of the 2016 Act (main oversight functions);

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(a) 2016 c. 25.  
(b) 1997 c. 50.  
(c) 2000 c. 23.  
(d) 2000 asp 11.

- (b) section 16(4) to (6) (meaning of “secondary data”) for the purpose of the definition of “secondary data” in section 229(9) of the 2016 Act;
- (c) section 199 (bulk personal datasets: interpretation) for the purpose of the definition of “bulk personal dataset” in section 229(9);
- (d) in section 229—
  - (i) subsection (1)(a) to (c);
  - (ii) subsection (2)(a) to (c);
  - (iii) subsection (3)(a) and (c) to (j);
  - (iv) subsection (4);
  - (v) subsection (5);
  - (vi) subsection (8)(a), (d)(i) so far as it applies to deciding whether to approve the grant or renewal of an authorisation, (d)(ii), and (j) to (m), and
  - (vii) the definitions of “bulk personal datasets”, “judicial authority”, “related systems data”, “relevant Minister” and “secondary data” in subsection (9);
- (e) section 233 (functions under other Parts and other enactments) for all remaining purposes;
- (f) section 234(2)(a) to (c) and (f) (matters required to be included in an annual report), (10) and (11);
- (g) section 235(5) (reporting to the Investigatory Powers Commissioner any refusal by operators to comply with requirements);
- (h) section 236 (referrals by the Intelligence and Security Committee of Parliament);
- (i) section 240 (abolition of existing oversight bodies);
- (j) paragraphs 67, 69 and 71 to 98 of Schedule 10.

## PART 2

### Investigatory Powers Commissioner: transitory, transitional and saving provisions

#### **Transitory provisions regarding the main functions of the Commissioner**

**3.—(1)** From 1st September 2017 until the coming into force of section 19 of the 2016 Act (power of Secretary of State to issue warrants)—

- (a) section 229(1) has effect as if for paragraph (c) there were substituted—
  - “(c) the obtaining of related communications data under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000(a)”, and
- (b) section 229(2)(a) has effect as if for “Chapter 1 of Part 2 or Chapter 1 of Part 6” there were substituted “Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000(b)”.

(2) From 1st September 2017 until the coming into force of section 45 of the 2016 Act (interception by providers of postal or telecommunications services), section 229(4)(e)(i) of the 2016 Act has effect as if the reference to section 45 were a reference to section 4(2) of RIPA (power to provide for lawful interception).

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(a) See section 5(6) of RIPA. Related communications data is defined in section 20 of RIPA.  
 (b) Amended by paragraph 132(3) of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), section 32 of the Terrorism Act 2006 (c. 11), paragraph 6 of Schedule 12 to the Serious Crime Act 2007 (c. 27), paragraphs 77 and 78 of Schedule 8 to the Crime and Courts Act 2013 (c. 22), sections 3, 4(1) to (7) and 5 of the Data Retention and Investigatory Powers Act 2014 (c. 27), and S.I. 2000/3253 and 2013/602. The amendments made by the Data Retention and Investigatory Powers Act 2014 are saved by paragraph 9 of Schedule 9 to the 2016 Act. There are other amendments not relevant to these Regulations.

(3) From 1st September 2017 until the coming into force of section 47 of the 2016 Act (postal services: interception for enforcement purposes), section 229(4)(e)(i) of the 2016 Act has effect as if the reference to section 47 were a reference to section 3(3A) and (3B)(a) of RIPA (lawful interception without an interception warrant).

(4) From 1st September 2017 until the coming into force of section 50 of the 2016 Act (interception in psychiatric hospitals), section 229(4)(e)(i) of the 2016 Act has effect as if the reference to section 50 were a reference to section 4(5) and (6)(b) of RIPA.

(5) From 1st September 2017 until the coming into force of section 46 of the 2016 Act (interception by business etc. for monitoring and record-keeping purposes), section 229(4)(e)(ii) of RIPA has effect as if the reference—

- (a) to section 46 were a reference to section 4(2) of RIPA, and
- (b) to an intercepting authority (within the meaning given by section 18(1)) were a reference to a person specified in section 6(2)(c) of RIPA (application for issue of an interception warrant).

(6) From 1st September 2017 until the coming into force of section 7 of the 2016 Act (monetary penalties for certain unlawful interceptions), section 229(8)(a) of the 2016 Act is to be read as if for sub-paragraph (i) there were substituted—

“(i) whether to serve, vary or cancel a monetary penalty notice under section 1(1A)(d) of, or paragraph 11 of Schedule A1(e) to, the Regulation of Investigatory Powers Act 2000, a notice of intent under paragraph 3 of that Schedule or an information notice under paragraph 9 of that Schedule.”.

#### **Transitory provisions regarding functions of the Interception of Communications Commissioner**

4. From 1st September 2017 until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force, the references to the Interception of Communications Commissioner in sections 1(1A) (unlawful interception), 12(11)(c) (maintenance of interception capability)(f), 15(4)(c) (general safeguards) and 19(9) (offence for unauthorised disclosures)(g) of, and paragraph 1 of Schedule A1 to, RIPA are to be read as references to the Investigatory Powers Commissioner(h).

#### **Continuity of functions**

5.—(1) The abolition of the office of a relevant commissioner does not affect the validity of anything done before the abolition.

(2) The transfer of a function does not affect the validity of anything done before the transfer.

(3) Paragraphs (4) to (7) apply in relation to the transfer of a function.

(4) Where anything is in the process of being made or done by or in relation to the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Chief

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- (a) Section 3(3A) was inserted by section 100(1) of the Policing and Crime Act 2009 (c. 26). Section 3(3B) was inserted by paragraph 2 of Schedule 8 to the Counter-Terrorism and Security Act 2015 (c. 6).
  - (b) Section 4(5) was amended by paragraph 208(a) of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43) and paragraph 98 of Schedule 5 to the Health and Social Care Act 2012 (c. 7).
  - (c) Section 6 was amended by paragraph 132(3) of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraph 6 of Schedule 12 to the Serious Crime Act 2007, paragraph 78 of Schedule 8 to the Crime and Courts Act 2013 and S.I. 2013/602.
  - (d) Section 1(1A) was inserted by S.I. 2011/1340.
  - (e) Schedule A1 was inserted by S.I. 2011/1340 and was amended by paragraph 125 of Schedule 9 to the Crime and Courts Act 2013.
  - (f) Section 12 was amended by section 4(1), (6) and (7) of the Data Retention and Investigatory Powers Act 2014 (c. 27). The amendments are saved by paragraph 9 of Schedule 9 to the 2016 Act.
  - (g) Section 19 was amended by paragraphs 131 and 134 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraphs 77 and 80 of Schedule 8 to the Crime and Courts Act 2013, and S.I. 2007/1098 and 2013/602.
  - (h) The Investigatory Powers Commissioner is defined for the purposes of RIPA by section 31(1) of that Act. Section 31(1) of RIPA was amended by paragraph 94 of Schedule 10 to the 2016 Act, which is brought into force by these Regulations.

Surveillance Commissioner or the Scottish Chief Surveillance Commissioner immediately before the transfer takes effect, it may be continued afterwards by or in relation to the Investigatory Powers Commissioner.

(5) Where anything is in the process of being made or done by or in relation to the other Surveillance Commissioners or the other Scottish Surveillance Commissioners immediately before the transfer takes effect, it may be continued afterwards by or in relation to a Judicial Commissioner.

(6) Where anything has been made or done by or in relation to the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Chief Surveillance Commissioner or the Scottish Chief Surveillance Commissioner and is in effect immediately before the transfer takes effect, it has effect afterwards as if made or done by or in relation to the Investigatory Powers Commissioner.

(7) Where anything has been made or done by or in relation to the other Surveillance Commissioners or the other Scottish Surveillance Commissioners and is in effect immediately before the transfer takes effect, it has effect afterwards as if made or done by or in relation to a Judicial Commissioner.

(8) In this regulation a reference to the transfer of a function is a reference to a case where—

- (a) a function is a function of a relevant commissioner,
- (b) that commissioner is abolished, and
- (c) a corresponding function is conferred on the Investigatory Powers Commissioner or the other Judicial Commissioners.

(9) For the purposes of this regulation, “relevant commissioner” means—

- (a) the Interception of Communications Commissioner;
- (b) the Intelligence Services Commissioner;
- (c) the Chief Surveillance Commissioner;
- (d) the other Surveillance Commissioners;
- (e) the Scottish Chief Surveillance Commissioner, or
- (f) the other Scottish Surveillance Commissioners.

### **Saving provisions regarding oversight**

**6.—**(1) The following provisions continue to have effect in relation to conduct taking place before the coming into force of these Regulations—

- (a) sections 57(2), (4) and (4A) (Interception of Communications Commissioner)(**a**), 59(2) and (4) (Intelligence Services Commissioner)(**b**), 59A(1) and (2) (Additional functions of the Intelligence Services Commissioner)(**c**) and 62(1) to (2A) (Additional functions of Chief Surveillance Commissioner)(**d**) of RIPA;
- (b) section 107(1) of the 1997 Act (supplementary provisions relating to Commissioners), and
- (c) section 21(1) and (4) of RIPSAs (functions of Chief Surveillance Commissioner).

(2) In continuing to have effect by virtue of paragraph (1) —

- (a) section 57(2), (4) and (4A) of RIPA is to be read as if for “Interception of Communications Commissioner” there were substituted “Investigatory Powers Commissioner”;

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(a) Section 57 was amended by paragraphs 30(1) and (2)(a) of Schedule 17 to the Constitutional Reform Act 2005 (c. 4), paragraphs 6 and 10 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9), and S.I. 2000/3253.

(b) Section 59(2) was amended by S.I. 2000/3253.

(c) Section 59A was inserted by section 5 of the Justice and Security Act 2013 (c. 18).

(d) Section 62(2A) was amended by paragraph 11 of Schedule 9 to the Protection of Freedoms Act 2012.

- (b) section 59(2) and (4) of RIPA is to be read as if for “Intelligence Services Commissioner” there were substituted “Investigatory Powers Commissioner”;
- (c) section 59A(1) and (2) is to be read as if for “Intelligence Services Commissioner” there were substituted “Investigatory Powers Commissioner”
- (d) section 62(1) to (2A) of RIPA is to be read as if for “Chief Surveillance Commissioner” there were substituted “Investigatory Powers Commissioner”;
- (e) section 21(1) and (4) of RIPA is to be read as if for “Chief Surveillance Commissioner” there were substituted “Investigatory Powers Commissioner”, and
- (f) section 107(1) of the 1997 Act is to be read as if for “Chief Commissioner” there were substituted “Investigatory Powers Commissioner”.

(3) A direction given under section 59A which is in force immediately before the coming into force of these Regulations continues to have effect in relation to conduct taking place before the coming into force of these Regulations as if given to the Investigatory Powers Commissioner.

## PART 3

### Surveillance Commissioners: transitory and saving provisions

#### **Transitory and saving provisions regarding the Surveillance Commissioners**

7.—(1) Where a person holds office as a Commissioner appointed under section 91(1)(b) of the 1997 Act (the Commissioners) immediately before the coming into force of section 240 of the 2016 Act (abolition of existing oversight bodies), section 91(1) to (4) and (6) to (10)(a) of the 1997 Act and sections 40(b) (information to be provided to Surveillance Commissioners) and 63(3) and (4) (Assistant Surveillance Commissioners) of RIPA continue to have effect in relation to such a person until—

- (a) 31st December 2017, or
- (b) the day on which the person ceases to be a Commissioner in accordance with section 91 of the 1997 Act, if earlier.

(2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.

(3) In continuing to have effect by virtue of paragraph (1)—

- (a) section 91 of the 1997 Act is to be read as if in subsection (9) and (9A) for “the Chief Commissioner” there were substituted “the Investigatory Powers Commissioner”, and
- (b) section 63 of RIPA is to be read as if—

- (i) for subsection (3) there were substituted—

“(3) The Investigatory Powers Commissioner may require a Commissioner appointed under section 91(1)(b) of the Police Act 1997 to provide the Investigatory Powers Commissioner with assistance in carrying out functions under section 229(3)(e), (f) and (h) of the Investigatory Powers Act 2016 (main oversight functions).”, and

- (ii) in subsection (4), for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner”.

(4) In their application to persons who continue to hold office by virtue of paragraph (1), references to a Judicial Commissioner in the following enactments are to be read as including a reference to a Commissioner appointed under section 91(1)(b) of the 1997 Act—

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- (a) Section 91 was amended by paragraph 8(1) of Schedule 4 to RIPA, paragraph 22(2) of Schedule 4 to the Insolvency Act 2000 (c. 39), paragraph 27 of Schedule 17 to the Constitutional Reform Act 2005, paragraph 11(2) of Schedule 16 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 150(2) and (3) to the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), S.I. 1999/1747, S.I. 2004/1941 and S.I. 2009/1941.
  - (b) Section 40 was amended by paragraph 16 of Schedule 12 to the Serious Crime Act 2007, paragraph 88 of Schedule 8 and paragraph 12 of Schedule 21 to the Crime and Courts Act 2013 and S.I. 2014/892.

- (a) sections 96 (notification of authorisations etc)(a), 97 (authorisations requiring approval)(b) and 103 to 105 (quashing of authorisations and appeals against decisions)(c) of the 1997 Act;
- (b) sections 35 to 39 (authorisations)(d), 54 (tipping-off)(e), 55 (general duties of specified authorities)(f), 68 (tribunal procedure)(g) and 72 (effect of codes of practice)(h) of RIPA, and
- (c) articles 4 to 6 (authorisations and appeals against decisions) of the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013(i).

### **Transitory and saving provisions regarding Assistant Surveillance Commissioners**

**8.**—(1) Where a person holds office as an Assistant Surveillance Commissioner appointed under section 63(1) of RIPA immediately before the coming into force of section 240 of the 2016 Act, section 63 of RIPA and section 91(3), (4), and (6) to (9) of the 1997 Act continue to have effect in relation to such a person until—

- (a) 30th April 2018, or
- (b) the day on which the person ceases to be a Commissioner in accordance with section 91 of the 1997 Act, if earlier.

(2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.

(3) So far as continuing to have effect by virtue of paragraph (1)—

- (a) section 91(9) of the 1997 Act is to be read as if for “the Chief Commissioner” there were substituted “the Investigatory Powers Commissioner”, and
- (b) section 63 of RIPA is to be read as if—

(i) for subsection (3) there were substituted—

“(3) The Investigatory Powers Commissioner may require an Assistant Surveillance Commissioner to provide the Investigatory Powers Commissioner with assistance in carrying out functions under section 229(3)(e) to (h) of the Investigatory Powers Act 2016.”, and

(ii) in subsection (4) for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner.”.

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- (a) Section 96 was amended by section 233(2)(a),(b) and (c) of the 2016 Act.
  - (b) Section 97 was amended by paragraph 8(7) of Schedule 4 and by Schedule 5 to RIPA, paragraph 100 of Schedule 4 to the Serious Organised Crime and Police Act 2005 and section 233(2)(c) and (h) of the 2016 Act.
  - (c) Section 103 was amended by paragraph 8 of Schedule 4 to RIPA and section 233(2)(a) to (d) and (h) of, and paragraph 72 of Schedule 10 to, the 2016 Act. Section 104 was amended by Schedule 5 to RIPA and section 233(2)(a), (e) and (f) of the 2016 Act. Section 105 was amended by paragraph 8(9) of Schedule 4 and by Schedule 5 to RIPA, paragraph 101 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraph 14(5) of Schedule 7 to the Police and Fire Reform (Scotland) Act 2012 (asp 8), section 233(2)(a) and (g) of the 2016 Act and S.I. 2013/602.
  - (d) Section 35 was amended by paragraph 139 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraph 13 of Schedule 12 to the Serious Crime Act 2007, paragraph 85 of Schedule 8 and paragraph 9 of Schedule 21 to the Crime and Courts Act 2013, sections 233(3)(a) to (c) of the 2016 Act and S.I. 2014/892
  - (e) Section 54 was amended by paragraphs 131 and 147 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraphs 5 and 21 of Schedule 12 to the Serious Crime Act 2007, paragraphs 77 and 92 of Schedule 8 to the Crime and Courts Act 2013, section 233(4)(b) of the 2016 Act, and S.I. 2007/1098 and 2013/602.
  - (f) Section 55 was amended by paragraphs 5 and 22 of Schedule 12 to the Serious Crime Act 2007, paragraphs 77 and 93(1) of Schedule 8 to the Crime and Courts Act 2013, section 233(4)(c) and (d) of the 2016 Act, and S.I. 2007/1098 and 2013/602.
  - (g) Section 68 was amended by paragraphs 131 and 152 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraphs 77 and 97 of Schedule 8 to the Crime and Courts Act 2013, section 242(3), 243(3), (4), (5) and (6) of the 2016 Act, and S.I. 2007/1098 and 2013/602.
  - (h) Section 72 was amended by paragraph 82(3) of Schedule 10 to the 2016 Act and S.I. 2014/2042.
  - (i) S.I. 2013/2788. Article 4 was amended by section 233(6)(b) of the 2016 Act. Article 6 was amended by section 233(6)(c) and (d) of the 2016 Act.

(4) In their application to persons who continue to hold office by virtue of paragraph (1), references to a Judicial Commissioner in sections 54(9)(a), 55(7)(b), 68(8)(c) and 72(4)(bb)(d) of RIPA are to be read as including a reference to an Assistant Surveillance Commissioner appointed under section 63(1) of RIPA.

### **Transitory and saving provisions regarding the Scottish Surveillance Commissioners**

**9.**—(1) Where a person holds office as a Surveillance Commissioner appointed under section 2(1)(b) of RIPA (conduct to which this Act applies)(e) immediately before the coming into force of section 240 of the 2016 Act, sections 2(1) to (4) and (6) to (9), 3(3) and (4) (Assistant Surveillance Commissioners) and 18 (information to be provided to Surveillance Commissioners)(f) of RIPA continue to have effect in relation to such a person until—

- (a) 31st December 2017, or
- (b) the day on which the person ceases to be a Surveillance Commissioner in accordance with section 2 of RIPA, if earlier.

(2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.

(3) So far as continuing to have effect by virtue of paragraph (1)—

- (a) section 2 of RIPA is to be read as if in subsection (9), for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner”, and
- (b) section 3 of RIPA is to be read as if—
  - (i) for subsection (3) there were substituted—

“(3) The Investigatory Powers Commissioner may require a Surveillance Commissioner appointed under section 2(1)(b) to provide the Investigatory Powers Commissioner with assistance in carrying out functions under section 229(3)(g) of the Act.”, and

- (ii) in subsection (4), for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner”.

(4) In relation to persons who continue to hold office by virtue of paragraph (1), references to a Judicial Commissioner in sections 2, 13 to 17 (authorisations and appeals against decisions)(g) and 26 (effect of codes of practice)(h) of RIPA are to be read as including a reference to a Surveillance Commissioner appointed under section 2(1)(b) of RIPA.

### **Transitory and saving provisions regarding the Scottish Assistant Surveillance Commissioners**

**10.**—(1) Where a person holds office as an Assistant Surveillance Commissioner appointed under section 3 of RIPA immediately before the coming into force of section 240 of the 2016 Act, sections 2(3), (4), and (6) to (8) and 3 of RIPA continue to have effect in relation to such a person until—

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- (a) Section 54(9) was amended by section 233(4)(b) of the 2016 Act.
  - (b) Section 55(7) was amended by section 233(4)(c) of the 2016 Act.
  - (c) Section 68(8) was amended by section 243(6) of the 2016 Act.
  - (d) Section 72(4)(bb) was inserted by paragraph 82(2) of Schedule 10 to the 2016 Act, which is brought into force by these Regulations.
  - (e) Section 2 was amended by paragraph 73 of Schedule 9 to the Constitutional Reform Act 2005, paragraphs 85 and 86 of Schedule 10 to the 2016 Act and S.I. 2009/1941.
  - (f) Section 18 was amended by paragraph 15(9) of Schedule 7 and Schedule 8 to the Police and Fire Reform (Scotland) Act 2012.
  - (g) Section 13 was amended by section 233(5)(a) to (c) of the 2016 Act. Section 14 was amended by section 233(5)(a) and (c) of the 2016 Act. Section 15 was amended by Schedule 8 to the Police and Fire Reform (Scotland) Act 2012 and section 233(5)(a), (b), and (d) of the 2016 Act. Section 16 was amended by paragraph 15(8) of Schedule 7 and by Schedule 8 to the Police and Fire Reform (Scotland) Act 2012 and section 233(5)(b) and (e) to (g) of , and paragraph 87 of Schedule 10 to the 2016 Act. Section 17 was amended by section 255(5)(b) and (f) of the 2016 Act.
  - (h) Section 26 was amended by paragraph 15(13) of Schedule 7 to the Police and Fire Reform (Scotland) Act 2012 and paragraph 93 of Schedule 10 to the 2016 Act.

- (a) 30th April 2018, or
  - (b) the day on which the person ceases to be an Assistant Surveillance Commissioner in accordance with section 3 of RIPSAs, if earlier.
- (2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.
- (3) So far as continuing to have effect by virtue of paragraph (1), section 3 of RIPSAs is to be read as if—
- (a) for subsection (3) there were substituted—

“(3) The Investigatory Powers Commissioner may require a Surveillance Commissioner appointed under subsection (1) to provide the Investigatory Powers Commissioner with assistance in carrying out functions under section 229(3)(g) of the Act.”, and
  - (b) in subsection (4), for “the Chief Surveillance Commissioner” there were substituted “the Investigatory Powers Commissioner”.

### **Decisions of the Chief Commissioner and other Surveillance Commissioners**

11. The repeal of subsection (10) of section 91 of the 1997 Act by section 240(2)(c) of the 2016 Act does not affect any decision taken before the repeal of that subsection.

29th August 2017

*Williams of Trafford*  
Minister of State  
Home Office

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations commence provisions of the Investigatory Powers Act 2016 (c. 25) (“the 2016 Act”) relating to oversight of investigatory powers by the Investigatory Powers Commissioner and the other Judicial Commissioners.

Regulation 2 brings into force section 240 of the 2016 Act, which abolishes the offices of the commissioners that are replaced by the Investigatory Powers Commissioner and the other Judicial Commissioners: the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Chief Surveillance Commissioner and other Surveillance Commissioners and the Scottish Chief Surveillance Commissioner and other Scottish Surveillance Commissioners. Regulation 2 also brings into force provisions giving the Investigatory Powers Commissioner and other Judicial Commissioners the functions exercised by the commissioners they replace.

Part 2 provides that the Investigatory Powers Commissioner has oversight relating to interception carried out under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23) until those provisions are repealed and replaced by provisions in the 2016 Act. It also provides for continuity where a commissioner has a function, that commissioner is abolished and an equivalent function is conferred on the Investigatory Powers Commissioner or the other Judicial Commissioners. That means, for example, that if a request for approval is sent to a Surveillance Commissioner before the coming into force of these Regulations, approval may be granted by a Judicial Commissioner after the coming into force of these Regulations. It also means that where, for example, something has been authorised by a Surveillance Commissioner before the coming into force of these Regulations, it will be treated afterwards as if authorised by a Judicial Commissioner.

Part 3 provides that a person who is a Surveillance Commissioner (or a Scottish Surveillance Commissioner) immediately before the abolition of those offices can continue to hold office until 31st December 2017. Similarly, a person who is an Assistant Surveillance Commissioner (or Scottish Assistant Surveillance Commissioner) can continue to hold office until 30 April 2018.



A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

## **NOTE AS TO EARLIER COMMENCEMENT REGULATIONS**

*(This note is not part of the Regulations)*

The following provisions of the Investigatory Powers Act 2016 (c. 25) have been brought into force by commencement regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1	13.02.17	2017/137
Section 2 (partially)	30.12.16	2016/1233(a)
Section 60(1) (partially)	13.02.17	2017/137
Section 61(7) (partially)	30.12.16	2016/1233
Section 87, except subsection (1)(b)	30.12.16	2016/1233
Section 88	30.12.16	2016/1233
Section 90(13)	30.12.16	2016/1233
Section 92	30.12.16	2016/1233
Section 93	30.12.16	2016/1233
Section 94 (partially)	30.12.16	2016/1233
Section 95	30.12.16	2016/1233
Section 97	30.12.16	2016/1233
Section 98	30.12.16	2016/1233
Section 229 (partially)	13.02.17	2017/137
Section 230	13.02.17	2017/137
Section 232	13.02.17	2017/137
Section 233(1) (partially)	13.02.17	2017/137
Section 234(1), (2)(g) to (i) and (3) to (9)	13.02.17	2017/137
Section 235(1) to (4) and (7)	13.02.17	2017/137
Section 237	13.02.17	2017/137
Section 238, except subsection (6)(b) and (c)	13.02.17	2017/137
Section 239	13.02.17	2017/137
Section 241	13.02.17	2017/137
Section 244	30.12.16	2016/1233
Section 246	13.02.17	2017/137
Section 247	13.02.17	2017/137
Section 249 (partially)	30.12.16	2016/1233
Section 250	13.02.17	2017/137
Section 251	13.02.17	2017/137
Section 253(3) to (6)	13.02.17	2017/137
Section 270 (partially)	30.12.16	2016/1233
Section 271 (partially)	30.12.16	2016/1233
Schedule 7	13.02.17	2017/137
Schedule 9, paragraphs 3, 4, 5, 8 and 9	30.12.16	2016/1233
Schedule 10, paragraph 63	30.12.16	2016/1233
Schedule 10, Part 8 (partially)	30.12.16	2016/1233

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