



# Regulation of Investigatory Powers (Scotland) Act 2000

## 2000 asp 11

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

#### **5 Lawful surveillance etc**

- (1) Conduct to which this Act applies shall be lawful for all purposes if—
  - (a) an authorisation under this Act confers an entitlement to engage in that conduct on the person whose conduct it is; and
  - (b) that person's conduct is in accordance with the authorisation.
- (2) A person shall not be subject to any civil liability in respect of any conduct of that person which—
  - (a) is incidental to any conduct that is lawful by virtue of subsection (1) above; 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) In this section "relevant enactment" means—
  - (a) an enactment contained in this Act; or
  - (b) an enactment contained in Part III of the Police Act 1997 (c. 50) (authorisation of interference with property and wireless telegraphy) insofar as relating to a police force.

#### **6 Authorisation of directed surveillance**

- (1) Subject to the following provisions of this Act, 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 that person is satisfied—
  - (a) that the authorisation is necessary on grounds falling within subsection (3) below; 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) for the purpose of preventing or detecting crime or of preventing disorder;
  - (b) in the interests of public safety; or
  - (c) for the purpose of protecting public health.
- (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.

## **7 Authorisation of covert human intelligence sources**

- (1) Subject to the following provisions of this Act, 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.
- (2) A person shall not grant an authorisation for the conduct or the use of a covert human intelligence source unless that person is satisfied—
  - (a) that the authorisation is necessary on grounds falling within subsection (3) below;
  - (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 (6) below and such other requirements as may be imposed by order made by the Scottish Ministers.
- (3) An authorisation is necessary on grounds falling within this subsection if it is necessary—
  - (a) for the purpose of preventing or detecting crime or of preventing disorder;
  - (b) in the interests of public safety; or
  - (c) for the purpose of protecting public health.
- (4) The Scottish Ministers 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) above, 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 described.
- (5) 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.
- (6) For the purposes of this Act 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 Scottish Ministers; and
  - (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.
- (7) 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 (8) below) the public authority for whose benefit the activities of that individual as such a source are to take place.
- (8) 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 (6) above to the relevant investigating authority are references to one of them (whether or not the same one in the case of each reference).

## **8 Persons entitled to grant authorisations under sections 6 and 7**

- (1) Subject to subsection (2) below, the persons designated for the purposes of sections 6 and 7 above are the individuals holding such offices, ranks or positions with relevant public authorities as are prescribed for the purposes of this subsection by order made by the Scottish Ministers.
- (2) The Scottish Ministers may by order impose restrictions—
- (a) on the authorisations under sections 6 and 7 above 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.

- (3) A public authority is a relevant public authority for the purposes of this section in relation to sections 6 and 7 above if it is—
- (a) a police force;
  - (b) the Scottish Administration;
  - (c) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
  - (d) the Common Services Agency for the Health Service;
  - (e) a health board;
  - (f) a special health board;
  - (g) a National Health Service trust established under section 12A of the National Health Service (Scotland) Act 1978 (c. 29);
  - (h) the Scottish Environment Protection Agency.
- (4) The Scottish Ministers may by order amend subsection (3) above by—
- (a) adding a public authority to those enumerated in that subsection;
  - (b) removing a public authority therefrom;
  - (c) making any change consequential on any change in the name of a public authority enumerated therein.
- (5) No order shall be made under subsection (4)(a) above unless it has been laid in draft before and approved by resolution of the Scottish Parliament.

## 9 Special provision for the Scottish Crime Squad

- (1) In this Act, the “Scottish Crime Squad” means the joint operation known by that name and established by agreement among the chief constables of the Scottish police forces and police authorities made under section 12 of the Police (Scotland) Act 1967 (c. 77) and in force at the date of Royal Assent to this Act or any other joint operation, howsoever named, established by agreement under that section and which fulfils purposes most or all of which consist of or include purposes which are the same as or similar to those fulfilled by the Scottish Crime Squad.
- (2) Sections 6 to 8 above and 19 to 32 below apply to the Scottish Crime Squad and constables seconded to it as if it were a public authority specified in section 8(3) above.
- (3) For the purposes of subsection (2) above, the Scottish Ministers shall prescribe, under subsection (1) of section 8 above, offices, ranks or positions with the Scottish Crime Squad corresponding to those they prescribe in relation to police forces under that subsection of that section.
- (4) A person who is a designated person for the purposes of section 6 or 7 above by reference to the office, rank or position with the Scottish Crime Squad held by that person shall not grant an authorisation under that section except on an application made by a constable seconded to that Squad.
- (5) For the purposes of subsections (2) and (3) above, references in this Act to a person’s office, rank or position with the Scottish Crime Squad shall be taken as references to that person’s office, rank or position with the police force from which that person is seconded.
- (6) This section has effect only for the purposes of enabling and regulating the grant and cancellation of authorisations under this Act within the Scottish Crime Squad;

accordingly, it does not otherwise affect the constitution of the Scottish Crime Squad, or the functions of constables seconded to it or the liabilities of the chief constables of the police forces from which those constables are seconded.

## **10 Authorisation of intrusive surveillance**

- (1) Subject to the following provisions of this Act, the chief constable of every police force shall have power to grant authorisations for the carrying out of intrusive surveillance.
- (2) No such authorisation shall be granted unless the chief constable granting it is satisfied—
  - (a) that the authorisation is necessary for the purpose of preventing or detecting serious crime; and
  - (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.
- (3) The matters to be taken into account in considering whether the requirements of subsection (2) above 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.
- (4) 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.

## **11 Rules for grant of authorisations**

- (1) A person who is a designated person for the purposes of section 6 or 7 above by reference to the office, rank or position with a police force held by that person shall not grant an authorisation under that section except on an application made by a member of the same force.
- (2) A chief constable of a police force 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; 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.
- (3) A chief constable of a police force may grant an authorisation for the carrying out of intrusive surveillance on the application of a constable seconded to the Scottish Crime Squad if—
  - (a) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any residential premises, those premises are in; and
  - (b) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any private vehicle, the chief constable is satisfied that the surveillance operation will commence in,

the area of operation of that chief constable's police force.

- (4) A single authorisation may combine both—
- (a) an authorisation granted under this Act by, or on the application of, an individual who is a member of a police force; and
  - (b) an authorisation given by, or on the application of, that individual under Part III of the Police Act 1997 (c. 50) (authorisation of interference with property and wireless telegraphy) insofar as relating to a police force,
- but the provisions of this Act or the 1997 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.
- (5) For the purposes of this section, the area of operation of a police force is the area for which that force is maintained.

## 12 Grant of authorisations in cases of urgency

- (1) This section applies in the case of an application for an authorisation for the carrying out of intrusive surveillance where the case is urgent.
- (2) If it is not reasonably practicable, having regard to the urgency of the case—
- (a) for the application to be considered by the chief constable of the police force in question; and
  - (b) for the application to be considered by a person (if there is one) who is entitled, as a designated deputy of that chief constable, to exercise the functions in relation to that application of that chief constable,
- the application may be made to and considered by any person who is entitled under subsection (4) below to act for that chief constable.
- (3) A person who considers an application under subsection (1) above shall have the same power to grant an authorisation as the person for whom the person considering the application is entitled to act.
- (4) For the purposes of this section a person is entitled to act for the chief constable of a police force if the person holds the rank of assistant chief constable in that force.
- (5) In this section “designated deputy”, in relation to a chief constable, means a person holding the rank of assistant chief constable who is designated to act under section 5(4) of the Police (Scotland) Act 1967 (c. 77).

## 13 Notification of authorisations for intrusive surveillance

- (1) Where a person grants or cancels an authorisation for the carrying out of intrusive surveillance, the person shall give notice of the grant or cancellation to an ordinary Surveillance Commissioner.
- (2) A notice given for the purposes of subsection (1) above—
- (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 Scottish Ministers 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 14 below 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 person granting the authorisation is satisfied that the case is one of urgency.
- (4) Where a notice for the purposes of subsection (1) above of the grant of an authorisation has been received by an ordinary Surveillance Commissioner, the Commissioner 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) above, decide whether or not to approve the authorisation.
- (5) Subject to subsection (6) below, the Scottish Ministers shall not make an order under subsection (2)(c) above unless a draft of the order has been laid before and approved by a resolution of the Scottish Parliament.
- (6) Subsection (5) above does not apply in the case of an order made on the first occasion on which the Scottish Ministers exercise their powers to make an order under subsection (2)(c) above.
- (7) The order made on that occasion shall cease to have effect at the end of the period of 40 days beginning with the day on which it was made unless, before the end of that period, it has been approved by resolution of the Scottish Parliament.
- (8) For the purposes of subsection (7) above—
  - (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 40 days, no account shall be taken of any period during which the Scottish Parliament is dissolved or is in recess for more than 4 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.

#### **14 Approval required for authorisations to take effect**

- (1) Subject to subsection (2) below, an authorisation for the carrying out of intrusive surveillance shall not take effect until such time (if any) as—
  - (a) the grant of the authorisation has been approved by an ordinary Surveillance Commissioner; and
  - (b) written notice of the decision of that approval by that Commissioner has been given, in accordance with subsection (3) below, to the person who granted the authorisation.
- (2) Where the person who grants the authorisation—
  - (a) is satisfied that the case is one of urgency; and
  - (b) gives notice in accordance with section 13(3)(b) above,subsection (1) above shall not apply to the authorisation, and the authorisation shall have effect from the time of its grant.
- (3) Where subsection (1) above applies to the authorisation—

- (a) a Surveillance Commissioner shall give approval under this section to the authorisation if, and only if, satisfied that there are reasonable grounds for being satisfied that the requirements of section 10(2)(a) and (b) above are satisfied in the case of the authorisation; and
  - (b) 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 that decision to the person who granted the authorisation.
- (4) If an ordinary Surveillance Commissioner decides not to approve an authorisation to which subsection (1) above applies, the Commissioner shall make a report of that decision and the Commissioner's findings to the most senior relevant person.
- (5) In this section "the most senior relevant person" means—
- (a) in relation to an authorisation granted on the application of a member of a police force, the chief constable of that force; and
  - (b) in relation to an authorisation granted on the application of a member of the Scottish Crime Squad, the chief constable of the police force—
    - (i) who;
    - (ii) whose designated deputy; or
    - (iii) on whose behalf a person entitled under subsection (4) of section 12 above, granted it.
- (6) 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.
- (7) In this section "designated deputy" has the same meaning as in section 12 above.

## **15 Quashing of authorisations etc**

- (1) Where an ordinary Surveillance Commissioner is at any time satisfied that, at the time the authorisation for the carrying out of intrusive surveillance was granted or at any time when it was renewed, there were no reasonable grounds for being satisfied that the requirements of section 10(2)(a) and (b) above were satisfied, the Commissioner may quash the authorisation with effect, as the Commissioner thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.
- (2) 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 being satisfied that the requirements of section 10(2)(a) and (b) above are satisfied in relation to the authorisation, he may cancel the authorisation with effect from such time as appears to the Commissioner to be the time from which those requirements ceased to be so satisfied.
- (3) Where, in the case of any authorisation of which notice has been given in accordance with section 13(3)(b) above, 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 being satisfied that the case was one of urgency, the Commissioner may quash the authorisation with effect, as the Commissioner thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.



- (4) Subject to subsection (6) below, where an ordinary Surveillance Commissioner quashes an authorisation under this section, the Commissioner may order the destruction of any records relating wholly or partly to information obtained by the authorised conduct after the time from which the decision of the Commissioner takes effect.
- (5) Subject to subsection (6) below, where—
- (a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (1) or (3) above); 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 being satisfied that the requirements of section 10(2)(a) and (b) above continued to be satisfied in relation to the authorisation,
- the Commissioner may order the destruction of any records relating, wholly or partly, to information obtained at such time by the authorised conduct.
- (6) No order shall be made under this section for the destruction of any records required for pending criminal or civil proceedings.
- (7) Where an ordinary Surveillance Commissioner exercises a power conferred by this section, the Commissioner shall, as soon as reasonably practicable, make a report of that exercise of that power and of the Commissioner's reasons for doing so—
- (a) to the most senior relevant person (within the meaning of section 14 above); and
  - (b) to the Chief Surveillance Commissioner.
- (8) 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.
- (9) No notice shall be required to be given under section 13(1) above in the case of a cancellation under subsection (2) above.

## **16 Appeals against decisions by Surveillance Commissioners**

- (1) A chief constable of a police force 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 15 above for the destruction of records.
- (2) A designated deputy of a chief constable or a person specified in or designated under subsection (4) of section 12 above, who granted an authorisation under that section, 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) below, the Chief Surveillance Commissioner, on an appeal under this section, shall allow the appeal—
- (a) if satisfied that there were reasonable grounds for being satisfied that the requirements of section 10(2)(a) and (b) above were satisfied in relation to the authorisation at the time in question; or
  - (b) if not satisfied that the authorisation is one of which notice was given in accordance with section 13(3)(b) above without there being any reasonable grounds for being satisfied that the case was one of urgency.
- (5) If, on an appeal falling within subsection (1)(b) above, the Chief Surveillance Commissioner—
- (a) is satisfied that grounds exist which justify the quashing or cancellation under section 15 above 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,
- the Chief Surveillance Commissioner may modify the ordinary Surveillance 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 15 above that the Chief Surveillance Commissioner considers should have been made.
- (6) Where, on appeal under this section against a decision to quash or cancel an authorisation, the Chief Surveillance Commissioner allows the appeal the Commissioner 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 12 above.

## **17 Appeals to the Chief Surveillance Commissioner: supplementary**

- (1) On determining an appeal under section 16 above, the Chief Surveillance Commissioner shall give notice of the 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 16 above is a determination to dismiss the appeal, the Chief Surveillance Commissioner shall make a report of the findings—
- (a) to the persons mentioned in subsection (1) above; and
  - (b) to the Scottish Ministers.
- (3) Subject to subsection (2) above, the Chief Surveillance Commissioner shall not give any reasons for any determination of the Commissioner on an appeal under section 16 above.

## **18 Information to be provided to Surveillance Commissioners**

It shall be the duty of—

- (a) every member of a police force; and
- (b) every member of the Scottish Crime Squad,

to comply with any request of a Surveillance Commissioner for documents or information required by the Commissioner for the purpose of enabling the Commissioner to carry out the functions of such a Commissioner under sections 13 to 17 above.