

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

INTRUSIVE SURVEILLANCE

Section 32: Authorisation of intrusive surveillance

201. This section deals with authorisations for intrusive surveillance. Such authorisations may only be granted by the Secretary of State (see sections 41 and 42) and by senior authorising officers as defined in *subsection (6)*. Sections 33(3) and (4) provide that a senior authorising officer may not grant an authorisation, except on an application by a member of his/her force, Service, Squad or organisation.
202. Again, intrusive surveillance authorisations cannot be granted unless specific criteria are satisfied, namely that, the Secretary of State or senior authorising officer believes that:
- the authorisation is necessary on specific grounds; and
 - the authorised activity is proportionate to what is sought to be achieved by it.
203. An additional factor which must be taken into account when considering whether the requirements are satisfied, is whether the information which it is thought necessary to obtain by the authorised conduct could reasonably be obtained by other means.
204. The specific grounds in this case are that it is necessary:
- in the interests of national security;
 - for the purpose of preventing or detecting serious crime; or
 - in the interests of the economic well-being of the United Kingdom.

Police and customs authorisations

205. *Sections 33 to 40* only apply to intrusive surveillance authorisations for investigations carried out by the police, NCIS, the National Crime Squad and Customs & Excise. They outline very similar procedures to those set out in part III of the Police Act 1997 (interference with property and wireless telegraphy).

Section 33: Rules for grant of authorisations

206. In the case of a police force, NCIS and the National Crime Squad, *subsection (3)* restricts an authorisation for intrusive surveillance involving residential premises to being granted only where the premises are within the area of operation of that force, Service or Squad. The areas of operations are set out in *subsection (6)*. For the three service police forces, this is defined in *subsection (7)*, in terms of the persons who are subject to "service discipline".

Section 34: Grant of authorisations for intrusive surveillance in the senior officer's absence

207. Where an application is made for an intrusive surveillance authorisation and the case is urgent but it is not reasonably practicable for the application to be considered by the "senior authorising officer" (as defined in section 32) or his designated deputy, an authorisation may be granted by a person entitled to act in his/her absence. *Subsection (4)* lists the officers entitled so to act and *subsection (6)* sets down those officers entitled to act as "designated deputies".

Section 35: Notification of authorisations for intrusive surveillance

208. Where a police or customs intrusive surveillance authorisation is granted, renewed or cancelled, except where it is cancelled under section 37(3), written notification must be given to an ordinary Surveillance Commissioner as soon as reasonably practicable. *Subsection (2)* requires that notification to be in accordance with arrangements made by the Chief Surveillance Commissioner and must specify the matters prescribed by order of the Secretary of State. Such a notice will indicate that the authorisation or renewal requires the approval of an ordinary Surveillance Commissioner before it takes effect (see section 36) or it will state that the case is one of urgency, together with the grounds for that belief. Although the order by the Secretary of State will be subject to the affirmative procedure, the initial order can be made without the approval of both Houses of Parliament, provided it is approved by Parliament within 40 days.
209. *Subsection (4)* provides that the ordinary Surveillance Commissioner will, as soon as practicable, scrutinise the notice, which can be transmitted by electronic means, and decide whether or not to approve the authorisation in those cases where his approval is required.

Section 36: Approval required for authorisations for intrusive surveillance to take effect

210. Except in urgent cases, authorisations granted for intrusive surveillance will not take effect until they have been approved by an ordinary Surveillance Commissioner and written notice of the Commissioner's decision has been given to the person who granted the authorisation.
211. Where the person who granted the authorisation believes the case to be one of urgency, the authorisation will take effect from the time of grant, provided the appropriate notice is given to the ordinary Surveillance Commissioner, as described in section 36(3).
212. *Subsection (4)* provides that an ordinary Surveillance Commissioner shall give his approval only if he is satisfied that there are reasonable grounds for believing that the authorisation is necessary and that the surveillance is proportionate to what is sought to be achieved.
213. If an ordinary Surveillance Commissioner decides not to approve an authorisation, *subsection (5)* requires him to make a report of his findings to the "most senior relevant person" (as defined in *subsections (6) and (7)*). This will be the chief constable or equivalent.

Section 37: Quashing of police and customs authorisations for intrusive surveillance etc

214. This section gives Surveillance Commissioners the power to quash or cancel an authorisation for intrusive surveillance.
215. Under *subsection (2)*, an ordinary Surveillance Commissioner may quash an authorisation, with effect from the time of the grant of the authorisation or renewal, if he believes that the criteria for authorisation in section 32 were not met at the time the authorisation was granted or renewed.

216. Alternatively, he may, under *subsection (3)* cancel an authorisation if he believes that there are no longer any reasonable grounds for believing that the criteria in section 32 are met. In such a case, he may cancel the authorisation from the time that the criteria, in his opinion, ceased to be met.
217. If an authorisation was granted or renewed by way of the urgency procedure, and the ordinary Surveillance Commissioner is satisfied that, at the time of grant or renewal, there were no reasonable grounds for believing the case to be one of urgency, he may quash the authorisation.
218. He may also, under *subsections (5) and (6)*, order the destruction of records, apart from those required for pending civil or criminal procedures. Where an authorisation is cancelled, he may only order the destruction of records from the time the authorisation no longer meets the criteria specified in section 32.
219. An order to destroy records does not become operative until after the period allowed for appealing against the decision or the dismissal of such an appeal.
220. Where an ordinary Surveillance Commissioner exercises a power conferred by this section, he will make a report of his actions, together with his reasons, as soon as reasonably practicable, to the most senior relevant person (usually the chief constable) and to the Chief Surveillance Commissioner.

Section 38: Appeals against decisions by Surveillance Commissioners

221. A senior authorising officer, or a designated deputy or other person granting an intrusive surveillance authorisation in the absence of the senior authorising officer, may appeal to the Chief Surveillance Commissioner against:
- a refusal of a Surveillance Commissioner to approve an authorisation or renewal;
 - a decision by a Surveillance Commissioner to quash or cancel an authorisation;
 - a decision to make an order for the destruction of records.
222. *Subsection (4)* provides that the Chief Surveillance Commissioner must allow an appeal if:
- he is satisfied that the criteria set out in section 32 were met at the time in question; and
 - he is not satisfied that the urgency procedure has been abused.
223. In relation to appeals against decisions to quash or cancel authorisations, the Chief Surveillance Commissioner may modify the decision if he considers that there were grounds for the action which the Surveillance Commissioner has taken but such action should have taken effect at a different time. In such cases, he may modify the Surveillance Commissioner's decision to that which he considers should have been made.
224. Where an appeal against a decision to quash or cancel an authorisation is allowed, *subsection (6)* provides that the Chief Surveillance Commissioner shall quash any related order for the destruction of records.

Section 39: Appeals to the Chief Surveillance Commissioner: supplementary

225. Where the Chief Surveillance Commissioner has determined an appeal, *subsection (1)* requires him to give notice of his determination to:
- the person who brought the appeal; and
 - the ordinary Surveillance Commissioner whose decision was appealed against.

*These notes refer to the Regulation of Investigatory Powers
Act 2000 (c.23) which received Royal Assent on 28 July 2000*

226. Where the appeal is dismissed, he will report his findings, to the appellant, the ordinary Surveillance Commissioner and to the Prime Minister. Other than this report, he will not give any reasons for his determination.
227. In accordance with section 107 of the Police Act 1997, the Chief Surveillance Commissioner will make an annual report on the discharge of his functions to the Prime Minister and may make a report to him at any other time of any matter relating to those functions (*Schedule 4, paragraph 8(10)*).
228. *Subsection (3)* provides that the annual reporting provisions contained in subsections (3) and (4) of the Police Act 1997 also relate to reports made by the Chief Surveillance Commissioner under subsection (2).