

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 2: Regulation of surveillance

Chapter 1: Regulation of CCTV and other surveillance camera technology

Section 29: Code of practice for surveillance camera systems

149. *Subsection (1)* requires the Secretary of State to prepare a code of practice in relation to surveillance camera systems. The term ‘surveillance camera systems’ is defined in *subsection (6)*, which includes Closed Circuit Television (“CCTV”) and Automatic Number Plate Recognition (“ANPR”) systems. *Subsection (2)* stipulates that the code must include guidance in relation to the development or use of such systems, or the use and processing of images derived from them. The latter could include, for example, what images are retained; how they are stored and for how long; and to what uses they might subsequently be put.
150. *Subsection (3)* lists more detailed issues that may be included in the code. These include advice about factors to consider when deciding whether the use of such equipment is appropriate (*subsection (3)(a)*); standards for equipment and operators (*subsection (3)(c),(f)* and (*g*)); and the provision of information to the public about aspects of such systems, including complaints procedures (*subsection (3)(e)* and (*i*)).
151. *Subsection (4)* provides that the code need not provide guidance in relation to every type of surveillance camera system. This is intended primarily to avoid a requirement to provide comprehensive guidance in relation to niche or emerging technologies not yet likely to have widespread application. It further provides that the extent of any guidance provided need not be identical in respect of each type of system, or may be suitably tailored to the type and usage of the system in question.
152. *Subsection (5)* requires the Secretary of State when preparing a code of practice to consult certain specified bodies and office holders, namely: the representative bodies of persons required to have regard to the code (as provided for in section 33(1)); the Association of Chief Police Officers; the Information Commissioner (responsible for the oversight of the Data Protection Act 1998; the Chief Surveillance Commissioner (appointed under Part 3 of the Police Act 1997 and responsible for oversight of the conduct of covert surveillance and covert human intelligence sources under that Act and the Regulation of Investigatory Powers Act 2000; the Surveillance Camera Commissioner (see section 34); and the Welsh Ministers. Other persons may be added to this list at the discretion of the Secretary of State.

Section 30: Issuing of the code

153. This section sets out the parliamentary procedure for approving the first surveillance camera code made under the preceding section. *Subsection (1)* requires the Secretary

of State to lay the proposed code before Parliament together with a draft order bringing the code into force. Such an order is subject to the affirmative resolution procedure (*subsection (2)*). If the draft order bringing into force the first code of practice is not approved the Secretary of State is required to prepare a revised code; the draft order bringing such a revised code into force is again subject to the affirmative procedure (*subsection (4)*).

154. *Subsection (7)* disapplies the hybridity procedure should such procedure apply to the order made under this section. Some statutory instruments which need to be approved by both Houses are ruled to be hybrid instruments because they affect some members of a group (be it individuals or bodies) more than others in the same group. Hybrid instruments are subject to a special procedure which gives those who are especially affected by them the opportunity to present their arguments against the statutory instrument to the Hybrid Instruments Committee and then, possibly, to a Select Committee charged with reporting on its merits. The hybrid instrument procedure is unique to the House of Lords and the process must be completed before the instrument can be approved by both Houses.

Section 31: Alteration or replacement of the code

155. This section places a duty on the Secretary of State to keep the surveillance camera code of practice under review; the Secretary of State may, in the light of such a review, amend the existing code or substitute a new code (*subsection (1)*). *Subsection (2)* requires that in making any alteration to the code or when introducing a new code the Secretary of State must again consult the persons listed in section 29(5). *Subsections (3) to (9)* makes provision relating to the issuing of a replacement or amended code. In particular, either House of Parliament has 40 days (excluding any period during which Parliament is not sitting for more than four days) in which to pass a resolution refusing to approve the code. If such a resolution is passed then the Secretary of State may prepare another code of practice or amended code of practice for resubmission. Where no resolution is passed, the replacement or amended code will come into force at the end of the 40-day period.

Section 32: Publication of code

156. This section requires the Secretary of State to publish the surveillance camera code of practice once approved under section 30, and any subsequent revisions to that code or any replacement code.

Section 33: Effect of code

157. *Subsection (1)* provides that certain specified bodies or organisations (referred to as a “relevant authority”) must have regard to the code if they operate or intend to operate any surveillance camera systems covered by the code. The bodies designated in the first instance as relevant authorities are set out in *subsection (5)*, namely local authorities, police and crime commissioners and chief officers of police.
158. *Subsection (5)(k)* provides that the Secretary of State may, by order (subject to the affirmative resolution procedure (*subsection (9)*)), designate other individuals or bodies, or descriptions thereof, as “relevant authorities” for the purposes of this section, thus requiring such designated bodies also to have regard to the code. Such an order may provide that a person designated as a relevant authority by virtue of such order is only required to have regard to the surveillance camera code of practice when discharging specified functions or acting in a specified capacity (*subsection (6) and (7)*). This is intended to provide for those instances where certain bodies have a dual role or multiple roles or, for example, exercise both public functions and private sector functions, and where the duty to have regard to the code may therefore be limited to the exercise of one, or one part of, their functions. Before making such an order the Secretary of State must consult the persons to be affected by it, or their representative body, together with other

specified persons (*subsection (8)*). *Subsection (10)* disapplies the hybridity procedure should such procedure apply to an order made under *subsection (5)(k)*.

159. *Subsection (2)* provides that a failure to adhere to any aspects of the code of practice would not, of itself, render a person liable to civil or criminal proceedings. However, the surveillance camera code is admissible in criminal or civil proceedings (*subsection (3)*) and a court or tribunal may take into account any failure of a relevant authority to comply with the duty to have regard to the code (*subsection (4)*).

Section 34: Commissioner in relation to code

160. *Subsection (1)* requires the Secretary of State to appoint a Surveillance Camera Commissioner. *Subsection (2)* sets out the Commissioner's responsibilities, namely promoting and encouraging compliance with the surveillance camera code of practice amongst users; reviewing how the code is working; and providing advice about the code (which may include, for example, advice to users of surveillance systems, members of the public, and Ministers as necessary). *Subsection (3)* makes provision for the terms of the Commissioner's appointment and for the payment of allowances to the Commissioner and of his or her expenses. *Subsection (4)* enables the Secretary of State to provide staff, accommodation, equipment and other facilities to support the work of the Commissioner.

Section 35: Reports by Commissioner

161. *Section 35* requires the Commissioner to send an annual report to the Secretary of State who must, in turn, lay the report before Parliament. The Commissioner must publish the report (*subsection (1)*).

Section 36: Interpretation: Chapter 1

162. *Section 36* contains definitions of the terms "the Commissioner", "surveillance camera code" and "surveillance camera systems" as used in this Chapter.