

# PROTECTION OF FREEDOMS ACT 2012

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## EXPLANATORY NOTES

### THE ACT

#### *Commentary on Sections*

#### **Part 7: Miscellaneous and general**

#### *Schedule 9: Consequential amendments*

#### **Part 3: Safeguards for certain surveillance under RIPA**

460. *Paragraphs 10 and 11* amend sections 57 and 62 of Regulation of Investigatory Powers Act 2000 (“RIPA”) so as to provide that it is not part of the functions of the Interception of Communications Commissioner or the Chief Surveillance Commissioner to review the decisions of the relevant judicial authority to approve or reject authorisations or notices made by local authorities.
461. *Paragraph 12* allows the Investigatory Powers Tribunal to continue to consider complaints about the conduct by public authorities notwithstanding that the conduct has been approved by a relevant judicial authority.
462. *Paragraph 13* extends the powers of the Investigatory Powers Tribunal so that it may quash an order made by a relevant judicial authority under new section 23A or 32A of RIPA.
463. *Paragraph 14* amends section 71 of PACE so that the requirement on the Secretary of State to produce one or more codes of practice in respect of the exercise of the powers under the Act does not extend to the exercise of powers by the relevant judicial authority under new sections 23A or 32A of RIPA.
464. *Paragraph 15* amends RIPA to make provision in respect of the procedure which is to apply to applications to the sheriff for an order under new section 23A or 32A by specifying matters which must be secured by rules of court. These requirements are to ensure that the rules governing applications for judicial approval in Scotland will preserve the covert nature of the authorisation, notice or renewal while maintaining the power of the Court of Session to regulate and prescribe the procedure and practice to be followed in any civil proceedings in the sheriff court.
465. *Paragraphs 15 and 16* also amend RIPA to enable the Lord Chancellor, by order, to make procedural rules for district judges (magistrates’ courts) in Northern Ireland in relation to local authority authorisations and notices for the acquisition of communications data and authorisations for covert human intelligence sources and directed surveillance. Currently, the Lord Chancellor has powers in relation to the making of Magistrate’s Courts Rules in Northern Ireland which deal with excepted matters only. The court rules in relation to the new sections 23A and 32A of RIPA will need to deal with both reserved and excepted matters. As such, the order making power at new section 77B of RIPA allows the Lord Chancellor to make rules. New section 77B also provides that where the Magistrate’s Courts Rules Committee (the body which

*These notes refer to the Protection of Freedoms Act  
2012 (c.9) which received Royal Assent on 1 May 2012*

makes rules for magistrate's courts in Northern Ireland) regulates and prescribes the procedure and practice to be followed in relation to an application to the district judge under new section 23A or 32A of RIPA, it is subject to, but not otherwise constrained by, the provisions relating to the judicial approval procedure in new sections 23B and 32B and any order made under new section 77B. Accordingly, if the Magistrates' Courts Rules Committee makes new court rules for the judicial approval process, it may not make provision which is contrary to that which is made by the Lord Chancellor in an order under new section 77B.

466. *Paragraph 17* inserts a new subsection (9) into section 81 (general interpretation) of RIPA to provide that the Secretary of State may make certain orders in respect of a transferred matter in respect of Northern Ireland where that matter is ancillary to a reserved or an excepted matter.