



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 2

#### REGULATION OF SURVEILLANCE

### CHAPTER 2

#### SAFEGUARDS FOR CERTAIN SURVEILLANCE UNDER RIPA

#### <sup>F1</sup>37 **Judicial approval for obtaining or disclosing communications data**

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#### **Textual Amendments**

**F1** S. 37 repealed (22.7.2020) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), **Sch. 10 Pt. 8** (with [Sch. 9 paras. 7, 8, 10](#)); S.I. 2020/766, reg. 2(e)(iv)

#### **38 Judicial approval for directed surveillance and covert human intelligence sources**

- (1) After section 32 of the Regulation of Investigatory Powers Act 2000 (authorisation of surveillance and human intelligence sources: intrusive surveillance) insert—

*“Authorisations requiring judicial approval*

#### **32A Authorisations requiring judicial approval**

- (1) This section applies where a relevant person has granted an authorisation under section 28 or 29.

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- (2) The authorisation is not to take effect until such time (if any) as the relevant judicial authority has made an order approving the grant of the authorisation.
- (3) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 28 if, and only if, the relevant judicial authority is satisfied that—
  - (a) at the time of the grant—
    - (i) there were reasonable grounds for believing that the requirements of section 28(2) were satisfied in relation to the authorisation, and
    - (ii) the relevant conditions were satisfied in relation to the authorisation, and
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 28(2) are satisfied in relation to the authorisation.
- (4) For the purposes of subsection (3) the relevant conditions are—
  - (a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that—
    - (i) the individual was a designated person for the purposes of section 28,
    - (ii) the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,
  - (b) in relation to a grant, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that—
    - (i) the individual was a designated person for the purposes of section 28,
    - (ii) the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and
  - (c) in relation to any other grant by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.
- (5) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 29 if, and only if, the relevant judicial authority is satisfied that—
  - (a) at the time of the grant—
    - (i) there were reasonable grounds for believing that the requirements of section 29(2), and any requirements imposed by virtue of section 29(7)(b), were satisfied in relation to the authorisation, and
    - (ii) the relevant conditions were satisfied in relation to the authorisation, and

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- (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 29(2), and any requirements imposed by virtue of section 29(7)(b), are satisfied in relation to the authorisation.
- (6) For the purposes of subsection (5) the relevant conditions are—
- (a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that—
- (i) the individual was a designated person for the purposes of section 29,
  - (ii) the grant of the authorisation was not in breach of any prohibition imposed by virtue of section 29(7)(a) or any restriction imposed by virtue of section 30(3), and
  - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,
- (b) in relation to a grant, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that—
- (i) the individual was a designated person for the purposes of section 29,
  - (ii) the grant of the authorisation was not in breach of any prohibition imposed by virtue of section 29(7)(a) or any restriction imposed by virtue of section 30(3), and
  - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and
- (c) in relation to any other grant by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.
- (7) In this section—
- “local authority in England” means—
- (a) a district or county council in England,
  - (b) a London borough council,
  - (c) the Common Council of the City of London in its capacity as a local authority, or
  - (d) the Council of the Isles of Scilly,
- “local authority in Wales” means any county council or county borough council in Wales,
- “Northern Ireland excepted or reserved matter” means an excepted or reserved matter (within the meaning of section 4(1) of the Northern Ireland Act 1998),
- “Northern Ireland transferred matter” means a transferred matter (within the meaning of section 4(1) of the Act of 1998),
- “relevant judicial authority” means—
- (a) in relation to England and Wales, a justice of the peace,
  - (b) in relation to Scotland, a sheriff, and
  - (c) in relation to Northern Ireland, a district judge (magistrates' courts) in Northern Ireland,
- “relevant person” means—

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- (a) an individual holding an office, rank or position in a local authority in England or Wales,
  - (b) also, in relation to a grant for any purpose relating to a Northern Ireland excepted or reserved matter, an individual holding an office, rank or position in a district council in Northern Ireland, and
  - (c) also, in relation to any grant of a description that may be prescribed for the purposes of this subsection by an order made by the Secretary of State or every grant if so prescribed, a person of a description so prescribed.
- (8) No order of the Secretary of State—
- (a) may be made under subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;
  - (b) may be made under this section so far as it makes provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament;
  - (c) may be made under this section so far as it makes provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly and would deal with a Northern Ireland transferred matter.

### **32B Procedure for judicial approval**

- (1) The public authority with which the relevant person holds an office, rank or position may apply to the relevant judicial authority for an order under section 32A approving the grant of an authorisation.
  - (2) The applicant is not required to give notice of the application to—
    - (a) any person to whom the authorisation relates, or
    - (b) such a person's legal representatives.
  - (3) Where, on an application under this section, the relevant judicial authority refuses to approve the grant of the authorisation concerned, the relevant judicial authority may make an order quashing the authorisation.
  - (4) In this section “relevant judicial authority” and “relevant person” have the same meaning as in section 32A.”
- (2) In section 43 of that Act (general rules about grant, renewal and duration of authorisations)—
- (a) after subsection (6) insert—
 

“(6A) The relevant judicial authority (within the meaning given by subsection (7) of section 32A) shall not make an order under that section approving the renewal of an authorisation for the conduct or the use of a covert human intelligence source unless the relevant judicial authority—

    - (a) is satisfied that a review has been carried out of the matters mentioned in subsection (7) below, and
    - (b) has, for the purpose of deciding whether to make the order, considered the results of that review.”, and
  - (b) in subsection (7) for “subsection (6)” substitute “ subsections (6) and (6A) ”.

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#### Commencement Information

**II** S. 38 in force at 1.11.2012 by [S.I. 2012/2075](#), [art. 4\(b\)](#) (with [art. 6](#))

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/2234 art. 13 by [S.I. 2014/831 art. 2\(2\)](#)
- specified provision(s) transitional provisions and savings for commencing S.I. 2013/1814 by [S.I. 2013/1813 art. 2-9](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 7A inserted by [2019 c. 3 Sch. 2 para. 20](#)