



Protection of Freedoms Act 2012

2012 CHAPTER 9

PART 2

REGULATION OF SURVEILLANCE

CHAPTER 1

REGULATION OF CCTV AND OTHER SURVEILLANCE CAMERA TECHNOLOGY

Code of practice

29 Code of practice for surveillance camera systems

- (1) The Secretary of State must prepare a code of practice containing guidance about surveillance camera systems.
- (2) Such a code must contain guidance about one or more of the following—
 - (a) the development or use of surveillance camera systems,
 - (b) the use or processing of images or other information obtained by virtue of such systems.
- (3) Such a code may, in particular, include provision about—
 - (a) considerations as to whether to use surveillance camera systems,
 - (b) types of systems or apparatus,
 - (c) technical standards for systems or apparatus,
 - (d) locations for systems or apparatus,
 - (e) the publication of information about systems or apparatus,
 - (f) standards applicable to persons using or maintaining systems or apparatus,
 - (g) standards applicable to persons using or processing information obtained by virtue of systems,
 - (h) access to, or disclosure of, information so obtained,

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- (i) procedures for complaints or consultation.
- (4) Such a code—
 - (a) need not contain provision about every type of surveillance camera system,
 - (b) may make different provision for different purposes.
- (5) In the course of preparing such a code, the Secretary of State must consult—
 - (a) such persons appearing to the Secretary of State to be representative of the views of persons who are, or are likely to be, subject to the duty under section 33(1) (duty to have regard to the code) as the Secretary of State considers appropriate,
 - (b) the Association of Chief Police Officers,
 - (c) the Information Commissioner,
 - (d) the Chief Surveillance Commissioner,
 - (e) the Surveillance Camera Commissioner,
 - (f) the Welsh Ministers, and
 - (g) such other persons as the Secretary of State considers appropriate.
- (6) In this Chapter “surveillance camera systems” means—
 - (a) closed circuit television or automatic number plate recognition systems,
 - (b) any other systems for recording or viewing visual images for surveillance purposes,
 - (c) any systems for storing, receiving, transmitting, processing or checking images or information obtained by systems falling within paragraph (a) or (b), or
 - (d) any other systems associated with, or otherwise connected with, systems falling within paragraph (a), (b) or (c).
- (7) In this section—
 - “the Chief Surveillance Commissioner” means the Chief Commissioner appointed under section 91(1) of the Police Act 1997,
 - “processing” has the meaning given by section 1(1) of the Data Protection Act 1998.

Procedural requirements

30 Issuing of code

- (1) The Secretary of State must lay before Parliament—
 - (a) a code of practice prepared under section 29, and
 - (b) a draft of an order providing for the code to come into force.
- (2) The Secretary of State must make the order and issue the code if the draft of the order is approved by a resolution of each House of Parliament.
- (3) The Secretary of State must not make the order or issue the code unless the draft of the order is so approved.
- (4) The Secretary of State must prepare another code of practice under section 29 if—
 - (a) the draft of the order is not so approved, and

- (b) the Secretary of State considers that there is no realistic prospect that it will be so approved.
- (5) A code comes into force in accordance with an order under this section.
- (6) Such an order—
 - (a) is to be a statutory instrument, and
 - (b) may contain transitional, transitory or saving provision.
- (7) If a draft of an instrument containing an order under this section would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

31 Alteration or replacement of code

- (1) The Secretary of State—
 - (a) must keep the surveillance camera code under review, and
 - (b) may prepare an alteration to the code or a replacement code.
- (2) Before preparing an alteration or a replacement code, the Secretary of State must consult the persons mentioned in section 29(5).
- (3) The Secretary of State must lay before Parliament an alteration or a replacement code prepared under this section.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the alteration or the replacement code, the Secretary of State must not issue the alteration or code.
- (5) If no such resolution is made within that period, the Secretary of State must issue the alteration or replacement code.
- (6) The alteration or replacement code—
 - (a) comes into force when issued, and
 - (b) may include transitional, transitory or saving provision.
- (7) Subsection (4) does not prevent the Secretary of State from laying a new alteration or replacement code before Parliament.
- (8) In this section “the 40-day period” means the period of 40 days beginning with the day on which the alteration or replacement code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the two days on which it is laid).
- (9) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (10) In this Chapter “the surveillance camera code” means the code of practice issued under section 30(2) (as altered or replaced from time to time).

32 Publication of code

- (1) The Secretary of State must publish the code issued under section 30(2).

- (2) The Secretary of State must publish any replacement code issued under section 31(5).
- (3) The Secretary of State must publish—
 - (a) any alteration issued under section 31(5), or
 - (b) the code or replacement code as altered by it.

Enforcement and Commissioner

33 Effect of code

- (1) A relevant authority must have regard to the surveillance camera code when exercising any functions to which the code relates.
- (2) A failure on the part of any person to act in accordance with any provision of the surveillance camera code does not of itself make that person liable to criminal or civil proceedings.
- (3) The surveillance camera code is admissible in evidence in any such proceedings.
- (4) A court or tribunal may, in particular, take into account a failure by a relevant authority to have regard to the surveillance camera code in determining a question in any such proceedings.
- (5) In this section “relevant authority” means—
 - (a) a local authority within the meaning of the Local Government Act 1972,
 - (b) the Greater London Authority,
 - (c) the Common Council of the City of London in its capacity as a local authority,
 - (d) the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple, in their capacity as a local authority,
 - (e) the Council of the Isles of Scilly,
 - (f) a parish meeting constituted under section 13 of the Local Government Act 1972,
 - (g) a police and crime commissioner,
 - (h) the Mayor’s Office for Policing and Crime,
 - (i) the Common Council of the City of London in its capacity as a police authority,
 - (j) any chief officer of a police force in England and Wales,
 - (k) any person specified or described by the Secretary of State in an order made by statutory instrument.
- (6) An order under subsection (5) may, in particular—
 - (a) restrict the specification or description of a person to that of the person when acting in a specified capacity or exercising specified or described functions,
 - (b) contain transitional, transitory or saving provision.
- (7) So far as an order under subsection (5) contains a restriction of the kind mentioned in subsection (6)(a) in relation to a person, the duty in subsection (1) applies only to the person in that capacity or (as the case may be) only in relation to those functions.
- (8) Before making an order under subsection (5) in relation to any person or description of persons, the Secretary of State must consult—

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- (a) such persons appearing to the Secretary of State to be representative of the views of the person or persons in relation to whom the order may be made as the Secretary of State considers appropriate,
 - (b) the Association of Chief Police Officers,
 - (c) the Information Commissioner,
 - (d) the Chief Surveillance Commissioner,
 - (e) the Surveillance Camera Commissioner,
 - (f) the Welsh Ministers, and
 - (g) such other persons as the Secretary of State considers appropriate.
- (9) No instrument containing an order under subsection (5) is to be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (10) If a draft of an instrument containing an order under subsection (5) would, apart from this subsection, be treated as a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

34 Commissioner in relation to code

- (1) The Secretary of State must appoint a person as the Surveillance Camera Commissioner (in this Chapter “the Commissioner”).
- (2) The Commissioner is to have the following functions—
 - (a) encouraging compliance with the surveillance camera code,
 - (b) reviewing the operation of the code, and
 - (c) providing advice about the code (including changes to it or breaches of it).
- (3) The Commissioner is to hold office in accordance with the terms of the Commissioner’s appointment; and the Secretary of State may pay in respect of the Commissioner any expenses, remuneration or allowances that the Secretary of State may determine.
- (4) The Secretary of State may, after consultation with the Commissioner, provide the Commissioner with—
 - (a) such staff, and
 - (b) such accommodation, equipment and other facilities,as the Secretary of State considers necessary for the carrying out of the Commissioner’s functions.

35 Reports by Commissioner

- (1) As soon as reasonably practicable after the end of each reporting period—
 - (a) the Commissioner must—
 - (i) prepare a report about the exercise by the Commissioner during that period of the functions of the Commissioner, and
 - (ii) give a copy of the report to the Secretary of State,
 - (b) the Secretary of State must lay a copy of the report before Parliament, and
 - (c) the Commissioner must publish the report.
- (2) The reporting periods are—

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- (a) the period—
 - (i) beginning with the surveillance camera code first coming into force or the making of the first appointment as Commissioner (whichever is the later), and
 - (ii) ending with the next 31 March or, if the period ending with that date is 6 months or less, ending with the next 31 March after that date, and
- (b) each succeeding period of 12 months.

Interpretation

36 Interpretation: Chapter 1

In this Chapter—

- “the Commissioner” has the meaning given by section 34(1),
- “surveillance camera code” has the meaning given by section 31(10),
- “surveillance camera systems” has the meaning given by section 29(6).

CHAPTER 2

SAFEGUARDS FOR CERTAIN SURVEILLANCE UNDER RIPA

37 Judicial approval for obtaining or disclosing communications data

After section 23 of the Regulation of Investigatory Powers Act 2000 (form and duration of authorisations and notices for obtaining and disclosing communications data) insert—

“23A Authorisations requiring judicial approval

- (1) This section applies where a relevant person has—
 - (a) granted or renewed an authorisation under section 22(3), (3B) or (3F), or
 - (b) given or renewed a notice under section 22(4).
- (2) The authorisation or notice is not to take effect until such time (if any) as the relevant judicial authority has made an order approving the grant or renewal of the authorisation or (as the case may be) the giving or renewal of the notice.
- (3) The relevant judicial authority may give approval under this section to the granting or renewal of an authorisation under section 22(3), (3B) or (3F) if, and only if, the relevant judicial authority is satisfied that—
 - (a) at the time of the grant or renewal—
 - (i) there were reasonable grounds for believing that the requirements of section 22(1) and (5) 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 22(1) and (5) are satisfied in relation to the authorisation.

(4) The relevant judicial authority may give approval under this section to the giving or renewal of a notice under section 22(4) if, and only if, the relevant judicial authority is satisfied that—

- (a) at the time of the giving or renewal of the notice—
 - (i) there were reasonable grounds for believing that the requirements of section 22(1) and (5) were satisfied in relation to the notice, and
 - (ii) the relevant conditions were satisfied in relation to the notice, 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 22(1) and (5) are satisfied in relation to the notice.

(5) For the purposes of subsections (3) and (4) the relevant conditions are—

- (a) in relation to any grant, giving or renewal by an individual holding an office, rank or position in a local authority in England, Wales or Scotland, that—
 - (i) the individual was a designated person for the purposes of this Chapter,
 - (ii) the grant, giving or renewal was not in breach of any restrictions imposed by virtue of section 25(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, giving or renewal, 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 this Chapter,
 - (ii) the grant, giving or renewal was not in breach of any restrictions imposed by virtue of section 25(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, giving or renewal by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.

(6) 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 Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994,

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“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—

- (a) an individual holding—
 - (i) an office, rank or position in a local authority in England or Wales, or
 - (ii) an office, rank or position in a local authority in Scotland (other than an office, rank or position in a fire and rescue authority),
- (b) also, in relation to a grant, giving or renewal 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, giving or renewal 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, giving or renewal if so prescribed, a person of a description so prescribed.

(7) No order of the Secretary of State—

- (a) may be made under subsection (6) 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, 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.

23B 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 23A approving the grant or renewal of an authorisation or (as the case may be) the giving or renewal of a notice.
- (2) The applicant is not required to give notice of the application to—
 - (a) any person to whom the authorisation or notice which is the subject of the application 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 or renewal of the authorisation concerned or (as

the case may be) the giving or renewal of the notice concerned, the relevant judicial authority may make an order quashing the authorisation or notice.

- (4) In this section “relevant judicial authority” and “relevant person” have the same meaning as in section 23A.”

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.
- (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,

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- (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
 - (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—
 - (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.

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- (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)”.