

**2018 No. 905**

**INVESTIGATORY POWERS**

**The Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018**

*Made* - - - - *25th July 2018*

*Coming into force in accordance with article 1*

The Secretary of State, in exercise of the powers conferred by sections 30(1), (3), (5) and (6), 71(5) and (8) and 78(5) of the Regulation of Investigatory Powers Act 2000(a) and paragraph 33(1) of Schedule 8 to the Investigatory Powers Act 2016(b), makes the following Order.

In accordance with section 71(3) of the Regulation of Investigatory Powers Act 2000, the Secretary of State has prepared and published drafts of the revised codes of practice brought into force by this Order and considered representations made about them.

In accordance with section 71(4) of that Act, the Secretary of State has laid before both Houses of Parliament drafts of the revised codes of practice.

A draft of this Order has been approved by resolution of each House of Parliament in accordance with sections 30(7) and 71(9) of that Act and section 267(3)(k) of the Investigatory Powers Act 2016.

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Investigatory Powers (Codes of Practice and Miscellaneous Amendments) Order 2018.

(2) Subject to paragraph (3), this Order comes into force on the 21st day after the day on which it is made.

(3) Article 6 comes into force on the day after the day on which this Order is made.

(4) In this Order—

“the Act” means the Regulation of Investigatory Powers Act 2000;

“the 2010 Order” means the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(c).

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(a) 2000 c. 23. Section 71(8) of the Act was amended by the Serious Crime Act 2015 (c. 9), Schedule 4, paragraph 190, and by the Investigatory Powers Act 2016 (c. 25), Schedule 10, paragraph 5.

(b) 2016 c. 25.

(c) S.I. 2010/521.

## Codes of practice

2. The following revised codes of practice, drafts of which were laid before Parliament on 4th June 2018, come into force on the day this Order comes into force—

- (a) the code of practice entitled “Covert Surveillance and Property Interference”;
- (b) the code of practice entitled “Covert Human Intelligence Sources”;
- (c) the code of practice entitled “Investigation of Protected Electronic Information”.

## Amendment of Schedule 1 to the Act

3.—(1) Schedule 1 to the Act (relevant public authorities)(a) is amended as follows.

(2) In Part 1 (relevant authorities for the purposes of sections 28 and 29)—

- (a) omit paragraph 13A;
- (b) after paragraph 18 insert—

“18A. The Marine Management Organisation.”.

(3) In Part 2 (relevant authorities for the purposes only of section 28), omit paragraph 28B and the heading before it.

## Amendment of Part 1 of the Schedule to the 2010 Order

4.—(1) Part 1 of the Schedule (offices etc. and restrictions in respect of public authorities specified in Part 1 of Schedule 1 to the Act) to the 2010 Order(b) is amended as follows.

(2) In the entry for the Department for Environment, Food and Rural Affairs—

- (a) in column (2) of the table—
  - (i) omit the heading “Section 28 authorisation” and the words “District Inspector in Marine and Fisheries Agency”;
  - (ii) omit the heading “Section 29 authorisation” and the words “Deputy Chief Inspector in Marine and Fisheries Agency”;
- (b) omit the corresponding entries in columns (3) and (4) of the table.

(3) In the entry for the Home Office—

- (a) in column (2) of the table, directly after the heading “Section 28 authorisation”, insert “Grade 6 with responsibility for investigations or research relating to crime, terrorism or extremism”;
- (b) in the corresponding entry in column (3) of the table, insert “-”;
- (c) in the corresponding entry in column (4) of the table, insert “Paragraphs (b) and (d)”.

(4) In the entry for the Northern Ireland Office—

- (a) in column (1) of the table, for “The Northern Ireland Office”, substitute “The Department of Justice in Northern Ireland”;
- (b) in column (2) of the table, for “Deputy Principal or Governor 3 in the Northern Ireland Prison Service” substitute “Director of Prisons or Governor in Charge”;
- (c) in column (3) of the table, for “Staff Officer or Governor 4 in the Northern Ireland Prison Service” substitute “Grade 7 or Governor in Charge”.

(5) In the entry for the Department for Business, Energy and Industrial Strategy, in column (2) of the table, for “Deputy Chief Investigation Officer in the Investigation Officers Branch” substitute “An investigating officer in the Insolvency Service at Grade 7 or above”.

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(a) Paragraph 13A of Schedule 1 was inserted by S.I. 2003/3171; paragraph 28B was inserted by S.I. 2010/521; there are other amendments to the Schedule not relevant to this Order.

(b) Part 1 of the Schedule to the Order was amended by the Crime and Courts Act 2013 (c. 22), Schedule 8, paragraph 190, and by S.I. 2013/472, 2013/602, 2013/2788, 2014/467, 2014/549, 2016/655, 2016/992 and 2017/1250.

(6) In the entry for the Department for Transport—

- (a) in column (2) of the table—
  - (i) omit the first heading “Section 28 authorisation” and the words “Chief Executive of the Driver and Vehicle Standards Agency in respect of an authorisation in relation to a former Driving Standards Agency function”;
  - (ii) under the second heading “Section 28 authorisation”, for “Head of Intelligence, Head of Investigations or Regional Operations Manager in the Driver and Vehicle Standards Agency in respect of an authorisation in relation to a former Vehicle and Operator Services Agency function”, substitute “Head of Intelligence or Head of Investigations in the Driver and Vehicle Standards Agency”;
  - (iii) under the heading “Section 29 authorisation”, for “Head of Intelligence, Head of Investigations or Regional Operations Manager in the Driver and Vehicle Standards Agency in respect of an authorisation in relation to a former Vehicle and Operator Services Agency function”, substitute “Head of Intelligence or Head of Investigations in the Driver and Vehicle Standards Agency”;
- (b) in column (3) of the table—
  - (i) omit “-”;
  - (ii) under the heading “Section 28 authorisation”, omit “in respect of an authorisation in relation to a former Vehicle and Operator Services Agency function”;
  - (iii) under the heading “Section 29 authorisation”, omit “in respect of an authorisation in relation to a former Vehicle and Operator Services Agency function”;
- (c) in column (4) of the table, omit the second entry “Paragraphs (b) and (d)”.

(7) In the entry for the Welsh Assembly Government—

- (a) in column (2) of the table—
  - (i) for “Head of Department for Health and Social Services” substitute “Director General Health and Social Service Group or Chief Executive NHS Wales”;
  - (ii) for “Head of Department for Health and Social Services Finance” substitute “Director of Finance, Department of Health and Social Services”;
  - (iii) for “Head of Fisheries Unit” substitute “Deputy Director, Marine and Fisheries Division”;
  - (iv) for “Regional Director or equivalent grade in the Care and Social Services Inspectorate for Wales” substitute “Head of Department or equivalent grade in the Care Inspectorate Wales”;
- (b) in column (3) of the table, for “Regulation Manager or equivalent grade in the Care and Social Services Inspectorate Wales” substitute “Senior Manager or equivalent grade in the Care Inspectorate Wales”.

(8) In the entry for the Environment Agency—

- (a) in column (2) of the table—
  - (i) for “Area Management Team member” substitute “Area Management Team Member or equivalent (Grade 7), Senior Enforcement Technical Advisor or equivalent (Grade 6)”;
  - (ii) for “Area Manager” substitute “Area Director or Deputy Director National Enforcement Service or equivalent Deputy Director”;
- (b) in column (3) of the table—
  - (i) for “Area Team Leader” substitute “Area Enforcement Team Leader or Enforcement Technical Adviser or equivalent (Grade 5)”;
  - (ii) omit the heading “Section 29 authorisation” and the words “National Enforcement Service Manager”, inserting “-”.

(9) In the entry for the Food Standards Agency, in column (2) of the table—

- (a) for “Head of Division or equivalent grade” substitute “Head of Food Crime, Head of Litigation or Head of Division or equivalent grade”;
- (b) for “Deputy Director of Legal Services or any Director” substitute “Head of Food Crime or Head of Litigation”.

(10) In the entry for the Gambling Commission, in column (2) of the table, for “Head of Department” substitute “Senior Manager”.

(11) In the entry for the Independent Office for Police Conduct, in column (3) of the table, for “Senior Investigating Officer” substitute “Operations Manager”.

(12) In the entry for the Gangmasters Labour and Abuse Authority, in column (2) of the table, for “Head of Operations” substitute “Senior Investigating Officer, Head of Compliance or equivalent grade (SEO/Grade 4A)”.

(13) In the entry for the Health and Safety Executive, in column (2) of the table, for “Band 2 Inspector” substitute “Band 1 Inspector”.

(14) At the end of the table insert—

“The Marine Management Organisation	<b>Section 28 authorisation</b> Grade 7 Marine Enforcement Officer	<b>Section 28 authorisation</b> Principal Marine Officer (SEO equivalent)	Paragraphs (b), (c) and (e)
	<b>Section 29 authorisation</b> Grade 6 Marine Enforcement Officer	–	Paragraphs (b), (c) and (e)”

**Amendment of Part 2 of the Schedule to the 2010 Order**

5.—(1) Part 2 of the Schedule (offices, etc. and restrictions in respect of relevant public authorities specified in Part 2 of Schedule 1 to the Act) to the 2010 Order(a) is amended as follows.

(2) In the entry for Her Majesty’s Chief Inspector of Education, Children’s Services and Skills, in column (2) of the table, for “Divisional Manager (Early Years Foundation Stage Frameworks), Divisional Manager (Social Care) or Director (Education and Care)” substitute “Deputy Director or Principal Officer”.

(3) In the entry for the Royal Pharmaceutical Society of Great Britain—

- (a) in column (1) of the table, for “the Royal Pharmaceutical Society of Great Britain” substitute “General Pharmaceutical Council”;
- (b) in column (2) of the table, omit the words “(Grade 7)”.

(4) Omit the entry for the force comprising the special constables appointed under section 79 of the Harbours, Docks and Piers Clauses Act 1847 on the nomination of the Dover Harbour Board.

(5) In the entry for the Natural Resources Body for Wales—

- (a) in column (2) of the table, for “Executive team member” substitute “Head of Operations”;
- (b) in column (3) of the table, for “Senior Manager” substitute “Operations Manager or Enforcement Manager”.

(a) Part 2 of the Schedule to the Order has been amended by S.I. 2011/2085, 2012/2007, 2013/755 and 2017/960.

## **Amendment of Schedule 8 to the Investigatory Powers Act 2016**

6. In Schedule 8 to the Investigatory Powers Act 2016 (combination of warrants and authorisations), in paragraph 27 (modification of rules as to duration), after sub-paragraph (3) insert—

“(4) In the case of a combined warrant which—

(a) includes an authorisation under section 32 of the Regulation of Investigatory Powers Act 2000 (authorisation of intrusive surveillance), and

(b) is addressed to the head of an intelligence service,

sub-paragraph (1) has effect as if in section 44 of that Act (special rules for intelligence services authorisations)(a) subsection (3), and the reference to that subsection in subsection (4), were omitted.”.

*Ben Wallace*  
Minister of State  
Home Office

25th July 2018

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Article 2 of this Order brings into force three revised codes of practice issued under section 71 of the Regulation of Investigatory Powers Act 2000 (c. 23) (“the Act”), which will replace the current version of those Codes issued under the Act. The codes of practice come into force on the day on which this Order comes into force.

The code of practice entitled “Covert Surveillance and Property Interference” is about the carrying out of covert surveillance under Part 2 of the Act and interference with property or wireless telegraphy under section 5 of the Intelligence Services Act 1994 (c. 13) and Part 3 of the Police Act 1997 (c. 50). The code of practice entitled “Covert Human Intelligence Sources” is about the authorisation of the use or conduct of covert human intelligence sources under Part 2 of the Act. The code of practice entitled “Investigation of Protected Electronic Information” is about the investigation of protected electronic information under Part 3 of the Act.

The codes of practice will be published by the Stationery Office and copies may be obtained from the Stationery Office bookshops or online shop. The codes of practice will also be available on the Regulation of Investigatory Powers Act 2000 codes of practice pages on the gov.uk website.

Article 3 of the Order makes three amendments to Parts 1 and 2 of Schedule 1 to the Act. The Schedule lists the public authorities able to authorise surveillance activity and the use of covert human intelligence sources under Part 2 of the Act. The amendments remove the ability to authorise under Part 2 of the Act from two public authorities and grant the ability to authorise to the Marine Management Organisation.

Articles 4 and 5 of the Order make various amendments to Parts 1 and 2 of the Schedule to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (S.I. 2010/521). The Schedule prescribes the offices in public authorities able to authorise surveillance activity and use of covert human intelligence sources and the grounds on which such authorisations may be made. The amendments to the Schedule reflect changes within public authorities to those responsible for authorisations under Part 2 of the Act.

Article 6 amends paragraph 27 of Schedule 8 to the Investigatory Powers Act 2016 (c. 25), which makes provision for the duration of combined warrants issued under that Schedule. The amendment provides that in the case of a combined warrant containing an authorisation for the

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(a) Section 44 was amended by S.I. 2000/3253 and 2001/1057.

carrying out of intrusive surveillance and which is issued on the application of any of the intelligence services section 44(3) of the Act does not apply. Section 44(3) would otherwise provide that such a warrant issued under the hand of an official would cease to have effect at the end of the second working day following the issue of the warrant. The amendment similarly provides that in the case of a combined warrant including a warrant under section 5 of the Intelligence Services Act 1994 (c. 13), section 6(2) of that Act is modified such that the warrant would cease to have effect at the end of the period of six months beginning with the day on which it was issued. Section 6(2) would otherwise provide that such a warrant issued under the hand of a senior official would cease to have effect at the end of the fifth working day following the issue of the warrant.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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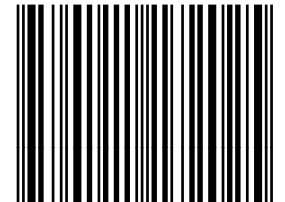


£6.90

UK201807251013 08/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/905>

ISBN 978-0-11-117202-5



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