



Regulation of Investigatory Powers (Scotland) Act 2000

2000 asp 11

Introductory

1 Conduct to which this Act applies

- (1) This Act applies to the following conduct—
 - (a) directed surveillance;
 - (b) intrusive surveillance; and
 - (c) the conduct and use of covert human intelligence sources.
- (2) For the purposes of this Act surveillance is directed if it is covert but not intrusive and is undertaken—
 - (a) for the purposes of a specific investigation or a specific operation;
 - (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
 - (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Act to be sought for the carrying out of the surveillance.
- (3) Subject to subsections (4) and (5) below, surveillance is intrusive for the purposes of this Act if, and only if, it is covert surveillance that—
 - (a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
 - (b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.
- (4) For the purposes of this Act surveillance is not intrusive to the extent that it is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle.
- (5) For the purposes of this Act surveillance which—
 - (a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle; but

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(b) is carried out without that device being present on the premises or in the vehicle,

is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

(6) In this Act—

- (a) references to the conduct of a covert human intelligence source are references to any conduct of such a source which falls within any of paragraphs (a) to (c) of subsection (7) below, or is incidental to anything falling within any of those paragraphs; and
- (b) references to the use of a covert human intelligence source are references to inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source.

(7) For the purposes of this Act a person is a covert human intelligence source if the person—

- (a) establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c) below;
- (b) covertly uses such a relationship to obtain information or to provide access to any information to another person; or
- (c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

(8) For the purposes of this section—

- (a) surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place;
- (b) a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose; and
- (c) a relationship is used covertly, and information obtained as mentioned in subsection (7)(c) above is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

(9) In this section “private information”, in relation to a person, includes any information relating to the person’s private or family life.

(10) References in this section, in relation to a vehicle, to the presence of a surveillance device in the vehicle include references to its being located on or under the vehicle and also include references to its being attached to it.

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