

# **CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 5 - Criminal Justice**

##### ***Section 106 – Grant of authorisations for surveillance***

516. This section amends the Regulation of Investigatory Powers (Scotland) Act 2000 (“the 2000 Act”) in relation to surveillance operations, including joint surveillance operations.
517. Subsection (2) amends section 10 (authorisations for intrusive surveillance) of the 2000 Act. Previously, the persons who may grant authorisations for the carrying out of intrusive surveillance were the chief constable of a police force and the Director General of the SCDEA. Section 10 is amended so as to include the Deputy Director General of the SCDEA as a person who may grant an authorisation for intrusive surveillance.
518. Subsection (3) inserts a new section 10A into the 2000 Act which makes provision about who may grant authorisations for the use of directed surveillance, Covert Human Intelligence Sources (“CHIS”) and intrusive surveillance in a joint surveillance operation. Subsection (8) inserts a definition of “joint surveillance operation” into section 31 of the 2000 Act; such an operation is one involving at least two police forces in Scotland working together, or at least one police force in Scotland and the Scottish Crime and Drug Enforcement Agency (“the SCDEA”) working together.
519. The new section 10A of the 2000 Act provides that the persons who are designated for the purpose of granting an authorisation for directed surveillance, CHIS and intrusive surveillance in a joint surveillance operation are the same people who are designated for the purposes of sections 6, 7 and 10 of the 2000 Act. In terms of an order made by the Scottish Ministers under section 8(1)<sup>1</sup> of that Act, to grant authorisations for directed surveillance and CHIS where the operation is not a joint surveillance operation: in relation to the SCDEA, that person is an officer of the rank of at least Superintendent or Grade PO7 Authorising Officer (Inspector in an urgent case); in relation to a police force that person is an officer of the rank of at least Superintendent (Inspector in an urgent case). The authorisation level for intrusive surveillance is a chief constable of a Scottish police force, the Director General of the SCDEA and, as is explained above, the Deputy Director of the SCDEA
520. Subsections (4) and (5) make consequential amendments as a result of the addition of the Deputy Director General of the SCDEA as a person who may grant authorisations for the carrying out of intrusive surveillance (including a joint surveillance operation). Subsection (4) amends section 11(3) of the 2000 Act so as to make it clear that the

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<sup>1</sup> That Order is currently the [Regulation of Investigatory Powers \(Prescription of Offices, Ranks and Positions\)\(Scotland\) Order 2000 \(S.S.I. 2000/343\)](#) (as amended by the [Regulation of Investigatory Powers \(Prescription of Offices, Ranks and Positions\) \(Scotland\) Amendment Order 2009 \(S.S.I. 466/2006\)](#))

*These notes relate to the Criminal Justice and Licensing (Scotland)  
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

Deputy Director General of the SCDEA can only grant an authorisation for the carrying out of intrusive surveillance where the application is made by a police member of that Agency. Subsection (5) amends section 12A(1) of the 2000 Act so as to include the Deputy Director General of the SCDEA within the ambit of that section which deals with the grant of authorisations for intrusive surveillance in cases of urgency. Subsection (6) adds the rank of the Deputy Director General of the SCDEA to the definition in section 14 of the 2000 Act of the 'most senior relevant person' to whom a Surveillance Commissioner must make a report should he or she decide not to approve an intrusive surveillance authorisation. Subsection (7) amends section 16 of the 2000 Act to add the rank of Deputy Director General of the SCDEA to the list of ranks who may appeal to the Chief Surveillance Commissioner about a decision made by a Surveillance Commissioner.