

# REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Surveillance*

##### *Section 1: Conduct to which this Act applies*

7. This section describes and defines the conduct which can be authorised under this Part of the Act. Three types of activity are covered: “directed surveillance”, “intrusive surveillance” and the conduct and use of covert human intelligence sources.
8. “Directed surveillance” is defined in *subsection (2)* as non-intrusive covert surveillance that is undertaken in relation to a specific investigation and which is likely to result in private information about a person being obtained. Under *subsection (2)(c)* actions taken by way of an immediate response to events for which it would not be reasonably practicable for an authorisation to be sought are not included as “directed surveillance”. By *subsection (8)*, surveillance will be covert where it is carried out in a manner calculated to ensure that the person or persons subject to the surveillance are unaware that it is or may be taking place.
9. “Intrusive surveillance” is defined in *subsections (3) to (5)* as covert surveillance carried out in relation to anything taking place on residential premises or in any private vehicle. This kind of surveillance may take place by means of either of a person or device located inside residential premises or a private vehicle or by means of a device placed outside which consistently provides a product of equivalent quality and detail as a product which would be obtained from a device located inside. For these purposes, a private vehicle is one used primarily for private purposes, for example for family, leisure or domestic purposes (section 31(1)).
10. *Subsection (4)* provides that surveillance is not intrusive when the device is one that only provides information about the location of the vehicle (e.g. a tracking device).
11. *Subsection (6)* defines what is meant in this Act by the conduct and use of a covert human intelligence source.
12. *Subsection (7)* defines a “covert human intelligence source”.
13. *Subsection (9)* defines what is meant by private information for the purposes of section 1. It is stated to include any information relating to a person’s private or family life.
14. *Subsection (10)* defines what is meant by the references to the presence of a surveillance device in a vehicle.

## ***Surveillance Commissioners***

### ***Section 2: Surveillance Commissioners***

15. This section provides for the appointment of a Chief Surveillance Commissioner and for the number of ordinary Surveillance Commissioners that the Scottish Ministers think fit to provide independent judicial oversight of the powers in the Act.
16. *Subsection (2)* provides that the Commissioners appointed under the Act must hold or have held high judicial office.
17. *Subsections (4) and (5)* provide that each Commissioner is to be appointed for a period of 3 years and that they may be re-appointed at the end of this term. *Subsections (6) and (7)* provide for the circumstances in which a Commissioner can be removed from office before the period of appointment expires. The Scottish Ministers may remove a Commissioner from office if the Commissioner becomes subject to a bankruptcy order, a disqualification order under the Company Directors Disqualification Act 1986 or is sentenced to imprisonment. The Scottish Parliament can also remove a Commissioner if it passes a resolution to that effect.
18. *Subsection (8)* provides that the Commissioners shall be paid for their duties under this Act by Scottish Ministers.
19. Under *subsection (9)* Scottish Ministers may provide the Commissioners with staff as Scottish Ministers see fit.
20. Under *subsection (10)* the decisions of the Chief Surveillance Commissioner or decisions of ordinary Surveillance Commissioners can not be appealed against, and cannot be questioned in court. An exception to this is appeals against the decisions of ordinary Surveillance Commissioners to the Chief Surveillance Commissioner under section 16 of the Act.

### ***Section 3: Assistant Surveillance Commissioners***

21. This section provides for the appointment of Assistant Surveillance Commissioners. Under *subsection (2)* no-one can be appointed in this capacity unless they hold or have held office as a sheriff, a Crown Court or Circuit judge in England and Wales, or a county court judge in Northern Ireland.
22. *Subsections (3) and (4)* outline the functions of the Assistant Surveillance Commissioners and ordinary Surveillance Commissioners in assisting the Chief Surveillance Commissioner. This will involve reviewing any matter and making a report of such a review to the Chief Surveillance Commissioner.
23. *Subsection (5)* provides that the terms of appointment of the Assistant Surveillance Commissioners will be the same as those for ordinary Surveillance Commissioners in section 2(5) to (8) of the Act (see paragraphs 16 and 17 above).

### ***Section 4: Delegation of Commissioner's functions***

24. This section provides that any of the functions of an ordinary Surveillance Commissioner or an Assistant Surveillance Commissioner under the Act may be performed by any authorised member of that Commissioner's staff.

## ***Authorisation of surveillance and human intelligence sources***

### ***Section 5: Lawful surveillance etc.***

25. This section provides that all conduct defined in section 1 will be lawful, provided it is carried out in accordance with the authorisation to which it relates.

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26. Furthermore, no civil liability will arise out of conduct which is incidental to the authorised conduct. However, this does not apply in the case where the incidental conduct is conduct which itself should have been separately authorised either under this Act or under Part III of the Police Act 1997 (which relates to authorisation of interference with property and wireless telegraphy).

***Sections 6, 7 and 8: Authorisation of directed surveillance; Authorisation of covert human intelligence sources; and Persons entitled to grant authorisations under sections 6 and 7***

27. These sections deal with the scheme of authorisations for directed surveillance and the conduct and use of covert human intelligence sources. Section 10 deals with the authorisation of intrusive surveillance (see paragraphs 38 to 40 below).
28. **Section 8** provides that such authorisations may be granted by such persons within the relevant public authorities holding such offices, ranks or positions as the Scottish Ministers prescribe. The “relevant authorities” are:
- a police force;
  - the Scottish Administration;
  - a council constituted under section 2 of the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#);
  - the Common Services Agency for the Health Service;
  - a health board;
  - a special health board;
  - a National Health Service trust established under section 12A of the [National Health Service \(Scotland\) Act 1978 \(c.29\)](#);
  - the Scottish Environment Protection Agency.
29. Police authorisations may only be granted an application from within the force in question (see section 11(1) and paragraphs 41 to 45 below).
30. **Sections 6 and 7** provide that authorisations cannot be granted unless specific criteria are satisfied, namely, that the person granting the authorisation is satisfied that:
- the authorisation is necessary on specific grounds; and
  - the authorised activity is proportionate to what is sought to be achieved by it.
31. The specific grounds are that the authorisation is necessary:
- for the purpose of preventing or detecting crime or of preventing disorder;
  - in the interests of public safety; or
  - for the purpose of protecting public health.
32. **Section 7(4)** confers a power on the Scottish Ministers to make an order which imposes certain constraints on authorisations which may be made in relation to covert human intelligence sources. The order may prohibit the giving of authorisations in relation to certain descriptions of conduct or use of covert human intelligence sources. An order may also impose requirements, in addition to those provided for by section 7(2), that must be satisfied before an authorisation may be granted in relation to certain descriptions of the conduct or use of covert human intelligence sources.
33. There is a further criterion in relation to covert human intelligence sources, which is set out in section 7(6), namely that specific arrangements exist to ensure that, amongst

other things, the source is independently managed and supervised and that records are kept of the use made of the source. The responsibility for such tasks falls to specified individuals within the organisation benefiting from the use of the source. As there may be cases where a source carries out activities for more than one organisation, it is provided that only one organisation will be identified as having responsibility for such arrangements and record-keeping.

34. *Subsection (2)* of section 8 provides that Scottish Ministers may impose, by order, restrictions on the types of authorisations granted and on the circumstances or purpose for which such authorisations may be granted.
35. **Sections 6(4) and 7(5)** set out the conduct that is authorised by the authorisation. Broadly speaking, it covers any conduct that occurs whilst carrying out the specified surveillance or is comprised in the activities involving the specified conduct or use of a covert human intelligence source, provided it is carried out or takes place in the manner and for the purposes described.

### ***Section 9: Special provision for the Scottish Crime Squad***

36. This section makes special provision for the activities of the Scottish Crime Squad to be covered by the Act. It provides that sections 6 to 8 and 19 to 32 of the Act apply to the Scottish Crime Squad as they do to the public authorities listed in section 8(3) of the Act.
37. *Subsections (3) to (5)* detail the provision for authorisations for activities undertaken by the Scottish Crime Squad under the remit of the Act. *Subsection (3)* provides that those offices, ranks or positions within the Scottish Crime Squad able to authorise the use of directed surveillance or covert human intelligence sources under the Act will be prescribed in the Order provided for in section 8(1) of the Act.

### ***Section 10: Authorisation of intrusive surveillance***

38. This section deals with authorisations for intrusive surveillance. Such authorisations may only be granted by chief constables in the police forces.
39. By virtue of *subsection (2)*, intrusive surveillance authorisations cannot be granted unless specific criteria are satisfied, namely that the chief constable is satisfied that:
  - the authorisation is necessary for the purpose of preventing or detecting serious crime (which is defined in section 31(6)); and
  - the authorised activity is proportionate to what is sought to be achieved by it.
40. An additional factor which must be taken into account is specified in *subsection (3)*. The chief constable must be satisfied that the information which it is thought necessary to obtain by the authorised conduct could not reasonably be obtained by other means.

### ***Section 11: Rules for grant of authorisations***

41. **Section 11** sets out rules for granting authorisations for surveillance by police forces.
42. *Subsection (1)* provides that a person who is a designated person within a police force for the purposes of section 6 or 7 (which relate respectively to the authorisation of directed surveillance and the authorisation of the conduct and use of covert human intelligence sources) should not grant an authorisation except on an application made by a member of the same police force.
43. *Subsection (2)* restricts an authorisation for intrusive surveillance involving residential premises to being granted only where the premises are within the area of operation of that force. The area of operation is defined in *subsection (5)*.

44. *Subsection (3)* provides that authorisations for the use of intrusive surveillance by the Scottish Crime Squad may be granted by a chief constable of a police force only if the operation relates to premises within the area of operation of that chief constable's police force or, if the operation relates to a vehicle, the operation will begin in that area.
45. *Subsection (3)* enables a single authorisation to combine both an authorisation granted under the Act and an authorisation given by, or on the application of, a member of a police force under Part III of the Police Act 1997 (which relates to the authorisation of interference with property and wireless telegraphy). Nevertheless, subsection (3) also provides that the provisions of the Act or the 1997 Act that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.

### ***Section 12: Grant of authorisations in cases of emergency***

46. Where an application is made for an intrusive surveillance authorisation and the case is urgent but it is not reasonably practicable for the application to be considered by a chief constable in the police force or his designated deputy, an authorisation may be granted by a person entitled to act in his/her absence. *Subsection (4)* details the officers entitled so to act and *subsection (5)* sets down those officers entitled to act as "designated deputies".
47. *Subsection (3)* provides that in the case where a person considers an application for an authorisation for the carrying out of intrusive surveillance where the case is urgent, the person concerned shall have the same power to grant an authorisation as the person for whom he is entitled to act. The person concerned would be a person who is entitled under section 12(4) to act for the chief constable.

### ***Section 13: Notification of authorisations for intrusive surveillance***

48. Where an intrusive surveillance authorisation is granted or cancelled, except where it is cancelled under section 15(2), written notification must be given to an ordinary Surveillance Commissioner as soon as reasonably practicable. *Subsection (2)* requires that notification to be in accordance with arrangements made by the Chief Surveillance Commissioner and must specify the matters prescribed by order of the Scottish Ministers.
49. By virtue of *subsection (3)*, such a notice must indicate that the authorisation or renewal requires the approval of an ordinary Surveillance Commissioner before it takes effect (see section 14) or that the case is one of urgency, together with the grounds for that belief.
50. *Subsection (4)* provides that the ordinary Surveillance Commissioner must, as soon as practicable, scrutinise the notice and decide whether or not to approve the authorisation in those cases where his approval is required.
51. *Subsection (5)* specifies that the Scottish Ministers must not make an order under section 13(2)(c) unless a draft of the order has been laid before and approved by resolution of the Scottish Parliament.
52. *Subsection (9)* provides that any notice that is required by any provision of section 13 to be given in writing may be given, instead, by being transmitted by electronic means.

### ***Section 14: Approval required for authorisations to take effect***

53. *Subsection (1)* provides that, except in urgent cases, authorisations granted for intrusive surveillance will not take effect until they have been approved by an ordinary Surveillance Commissioner and written notice of the Commissioner's decision has been given to the person who granted the authorisation.

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54. *Subsection (2)* provides that where the person who granted the authorisation is satisfied that the case is one of urgency, the authorisation will take effect from the time of grant, provided the appropriate notice is given to the ordinary Surveillance Commissioner, as described in section 13(3).
55. *Subsection (3)* provides that an ordinary Surveillance Commissioner shall give his approval only if he is satisfied that there are reasonable grounds for being satisfied that the authorisation is necessary and that the surveillance is proportionate to what is sought to be achieved.
56. If an ordinary Surveillance Commissioner decides not to approve an authorisation, *subsection (4)* requires him to make a report of his findings to the “most senior relevant person” (as defined in *subsection (5)*). This will be a chief constable.
57. *Subsection (6)* specifies that any notice that is required by any provision of section 14 to be given in writing may be given, instead, by being transmitted by electronic means.

***Section 15: Quashing of authorisations etc.***

58. This section gives Surveillance Commissioners the power to quash or cancel an authorisation for intrusive surveillance.
59. Under *subsection (1)*, an ordinary Surveillance Commissioner may quash an authorisation, with effect from the time of the grant of the authorisation or renewal, if he is satisfied that the criteria for authorisation in section 10 were not met at the time the authorisation was granted or renewed.
60. Alternatively, he may, under *subsection (2)*, cancel an authorisation if he is satisfied that there are no longer any reasonable grounds for being satisfied that the criteria in section 10 are met. In such a case, he may cancel the authorisation from the time that the criteria, in his opinion, ceased to be met.
61. *Subsection (3)* provides that if an authorisation was granted or renewed by way of the urgency procedure, and the ordinary Surveillance Commissioner is not satisfied that, at the time of grant or renewal, there were reasonable grounds for being satisfied that the case is one of urgency, he may quash the authorisation.
62. He may also, under *subsections (4) and (5)*, order the destruction of records. Where an authorisation is cancelled, he may order the destruction of records only from the time the authorisation no longer meets the criteria specified in section 10.
63. *Subsection (6)* provides that no order may be made under section 15 for the destruction of any records which are required for pending criminal or civil proceedings.
64. *Subsection (7)* provides that where an ordinary Surveillance Commissioner exercises a power conferred by this section, he must make a report of his actions, together with his reasons, as soon as reasonably practicable, to the most senior relevant person and to the Chief Surveillance Commissioner.
65. *Subsection (8)* provides that an order to destroy records does not become operative until after the period allowed for appealing against the decision or the dismissal of such an appeal.

***Section 16: Appeals against decisions by Surveillance Commissioners***

66. *Subsections (1) and (2)* provide that a senior authorising officer, or a designated deputy or other person granting an intrusive surveillance authorisation in the absence of the chief constable may appeal to the Chief Surveillance Commissioner against:
  - a refusal of a Surveillance Commissioner to approve an authorisation or renewal;
  - a decision by a Surveillance Commissioner to quash or cancel an authorisation; or

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- a decision to make an order for the destruction of records.
67. *Subsection (3)* imposes a time limit of 7 days for making an appeal.
68. *Subsection (4)* provides that the Chief Surveillance Commissioner must allow an appeal if:
- he is satisfied that the criteria set out in section 10 were met at the time in question; and
  - he is not satisfied that the urgency procedure has been abused.
69. By virtue of *subsection (5)*, in relation to appeals against decisions to quash or cancel authorisations, the Chief Surveillance Commissioner may modify the decision if he considers that there were grounds for the action which the Surveillance Commissioner has taken but such action should have taken effect at a different time. In such cases, he may modify the Surveillance Commissioner's decision to that which he considers should have been made.
70. Where an appeal against a decision to quash or cancel an authorisation is allowed, *subsection (6)* provides that the Chief Surveillance Commissioner shall quash any related order for the destruction of records.

### ***Section 17: Appeals to the Chief Surveillance Commissioner: supplementary***

71. Where the Chief Surveillance Commissioner has determined an appeal under section 16, *subsection (1)* requires him to give notice of his determination to:
- the person who brought the appeal; and
  - the ordinary Surveillance Commissioner whose decision was appealed against.
72. *Subsection (2)* provides that where the appeal is dismissed, he will report his findings to the appellants, the ordinary Surveillance Commissioner and to the Scottish Ministers.
73. *Subsection (3)* provides that the Chief Surveillance Commissioner shall not, other than as mentioned in *subsection (2)*, give any reasons for his determination.

### ***Section 18: Information to be provided to Surveillance Commissioners***

74. **Section 18** imposes a duty on every member of a police force and every member of the Scottish Crime Squad to comply with certain requests of a Surveillance Commissioner. This relates to requests for documents or information required by the Commissioner concerned for the purpose of enabling him to carry out the functions of a Commissioner under sections 13 to 17.

### ***Grant, renewal and duration of authorisations***

#### ***Section 19: General rules about grant, renewal and duration***

75. This section sets out the general rules for authorisations, including their granting, renewal, and duration.
76. *Subsection (1)* provides that, in urgent cases, an authorising officer may give an oral authorisation. All other authorisations must be in writing.
77. *Subsection (2)* provides that a single authorisation may be given, combining two or more authorisations under this Act. When this occurs, the provisions of this Act which relate to one type of activity only shall apply to those parts of the authorisation which authorises that type of activity. Further provisions for combined authorisations are in section 11(4).

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78. *Subsection (3)* provides that oral authorisations and those granted by officers entitled to act in urgent cases in the absence of the authorising officer or his designated deputy will expire after 72 hours, beginning with the time when the grant or renewal of an authorisation takes effect.
79. Except where granted or renewed orally or by an officer entitled to act in urgent cases, authorisations for the use of covert human intelligence sources will last for 12 months, beginning with the day on which the grant or renewal takes effect.
80. Authorisations for the use of intrusive or directed surveillance will last for 3 months. The time limits in *subsection (3)* are all subject to *subsection (8)*.
81. *Subsection (4)* provides that an authorisation may be renewed at any time before it ceases to have effect by any person entitled to grant a new authorisation of the same type. The same conditions attach to a renewal of surveillance as to the original authorisation. However, before renewal of an authorisation for the conduct or use of a covert human intelligence source, *subsection (6)* requires there to be a review of the use made of that source, the tasks given to that source and the information so obtained.
82. *Subsection (5)* applies sections 6 to 18 in relation to renewal of authorisations on the same basis as those sections apply to grants of authorisations.
83. *Subsections (6) and (7)* impose conditions for the renewal of an authorisation for the conduct or use of a covert human intelligence source. The person who is empowered to renew the authorisation must be satisfied that a review has been carried out of the matters mentioned in *subsection (7)* and has, for the purpose of deciding whether he should renew the authorisation, considered the results of that review. The matters which must be reviewed are specified in *subsection (7)* and are the use made of the source in the period since the grant or, as the case may be, latest renewal of the authorisation and the tasks given to the source during that period and the information obtained from the conduct or the use of the source.
84. *Subsection (8)* gives power to the Scottish Ministers to specify by order shorter periods than those mentioned in *subsection (3)*.
85. *Subsection (9)* provides that a renewal of an authorisation shall take effect not from the time of renewal but from the day the authorisation would have ceased to have effect, but for the renewal.

**Section 20: Cancellation of authorisations**

86. *Subsection (1)* sets out when the person who granted or renewed an authorisation must cancel it.
87. *Subsection (2)* provides that where an authorisation was granted or renewed by a person entitled to act for any other person, then that other person must cancel it in accordance with *subsection (1)*. However, by virtue of *subsection (3)*, where it is not practicable for this person to cancel it, an authorising officer's deputy (defined in *subsections (6) and (7)*) who granted an authorisation is also under a duty to cancel an authorisation in those cases where he would have had the power to act on the authorising officer's behalf.
88. *Subsections (4) and (5)* provide for the Scottish Ministers to make regulations setting out how the duty for cancelling authorisations should be performed where the authorising officer is no longer available and on whom such a duty should fall.
89. *Subsections (6) and (7)* define the references to a person's deputy and designated deputy.

## **Chief Surveillance Commissioner**

### **Section 21: Functions of Chief Surveillance Commissioner**

90. This section outlines the functions of the Chief Surveillance Commissioner, who is appointed under section 2(1) of this Act, in keeping under review the use of powers or duties conferred or imposed by this Act.
91. *Subsection (3)* imposes a duty upon the Chief Surveillance Commissioner to give the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000 all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as is appropriate in connection with the investigation of any matter by it or otherwise for the purposes of the Tribunal's consideration or determination of any matter.
92. *Subsection (4)* makes it clear that *subsection (1)* does not apply in the case of any power of the Scottish Ministers to make, amend or revoke any subordinate legislation. Accordingly, the Chief Surveillance Commissioner does not have a function to review the exercise of any such power.

### **Section 22: Co-operation with and reports by Commissioner**

93. *Subsection (1)* requires that all those who may be involved in requesting, authorising, carrying out or using the products of surveillance or covert human intelligence sources should disclose or provide to the Surveillance Commissioner all documents and information required by that Commissioner.
94. *Subsection (2)* imposes a duty upon the Chief Surveillance Commissioner to make a report to the Scottish Ministers with respect to any case where he considers that there has been a contravention of the provisions of the Act in relation to any matter with which the Commissioner is concerned and where the contravention has not been the subject of a report made to the Scottish Ministers by the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000.
95. *Subsection (3)* imposes a duty upon the Chief Surveillance Commissioner to make an annual report to the Scottish Ministers with respect to the carrying out of his functions under the Act.
96. *Subsection (4)* requires the Scottish Ministers to lay before the Scottish Parliament a copy of every annual report made by the Chief Surveillance Commissioner under subsection (3), together with a statement as to whether any matter has been excluded from that copy in pursuance of the provisions of subsection (5).
97. *Subsection (5)* provides that the Scottish Ministers may exclude from the copy of any annual report to be made by the Chief Surveillance Commissioner such matters which it appears to them should not be published because it would be contrary to the public interests, prejudicial to the prevention or detection of serious crime or prejudicial to the continued discharge of the functions of any public authorities whose activities include activities that are subject to the review by the Commissioner.

## **Complaints by Aggrieved Persons**

### **Section 23: Complaints to the Tribunal**

98. *Subsection (1)* defines the Tribunal referred to in this Act as the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000.
99. *Subsections (2) and (3)* set out the key elements of the Tribunal's jurisdiction in relation to this Act. It is to be the appropriate forum for complaints or proceedings in relation to any complaint by a person who believes that he has been subject to any use of

investigatory powers under this Act which he believes to have been carried out in the challengeable circumstances described in *subsection (4)*.

100. *Subsection (4)* defines what are challengeable circumstances.
101. Under *subsection (5)* conduct should only fall within those circumstances if it is conduct which took place with, or might reasonably have been considered necessary to take place only with, the authority, or purported authority, or an authorisation under the Act or an authorisation under section 93 of the Police Act 1997 if given by a Scottish police force.

### ***Codes of practice***

#### ***Section 24: Issue and revision of codes of practice***

102. This sections deals with the issuing of one or more codes of practice to explain in greater detail the practical arrangements relating to the use of the provisions of this Act.
103. *Subsections (1) and (2)* require the Scottish Ministers to issue one or more codes of practice covering the powers and duties in this Act and those relating to interference with property or wireless telegraphy under Part III of the Police Act 1997.
104. *Subsections (3) and (4)* require the Scottish Ministers to consult on any code of practice and lay a draft of the code of practice before Parliament.
105. *Subsection (5)* provides that a code of practice issued by the Scottish Ministers under this section shall not be brought into force except in accordance with an order made by them. *Subsection (6)* provides that such an order may contain transitional provisions and savings in connection with the bringing into force of the code of practice.
106. *Subsection (7)* provides that the Scottish Ministers may from time to time revise the whole or any part of a code and issue the revised code.
107. *Subsection (8)* provides that the provisions of subsections (3) to (6) apply (with appropriate modifications) in relation to the issue of any revised code as they apply in relation to the first issue of such a code.
108. *Subsection (9)* sets out the Parliamentary procedure for making an order under subsection (5). A draft of the order must be laid before and approved by a resolution of the Scottish Parliament before the order may be made.

#### ***Section 25: Interim codes of practice***

109. This section gives statutory effect to interim codes of practice. An interim code will have effect from its date of issue until it is superseded by a code issued in accordance with section 24.

#### ***Section 26: Effect of codes of practice***

110. *Subsection (1)* requires any person to take account of any applicable code of practice issued under sections 24 or 25 while exercising or performing any power or duty under this Act.
111. *Subsection (2)* explains that a failure to comply with a code of practice issued under sections 24 or 25 will not of itself constitute a criminal offence or give rise to liability in civil proceedings.
112. *Subsection (3)* allows the evidential use of a code of practice in court.
113. *Subsection (4)* requires that, where relevant, the statutory bodies described in this subsection must take into account the provisions of a code of practice.

### ***Supplementary provisions***

#### ***Section 27: Power to extend or modify authorisation provisions***

114. *Subsection (1)* enables the Scottish Ministers, by order, to change the types of activities which fall within the categories of intrusive and directed surveillance by providing that a type of directed surveillance will be treated as intrusive surveillance. Furthermore, they may, by order, provide that additional types of surveillance, which are not at present defined as directed or intrusive surveillance in section 1, will be covered by the Act and become capable of being authorised.
115. *Subsection (2)* provides that no order shall be made under this section unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

#### ***Section 28: Orders and regulations***

116. *Section 28* makes provision with respect to making of orders and regulations under any provision of the Act.
117. *Subsection (2)* provides that any order or regulations which the Scottish Ministers have the power to make under any provision of the Act shall be exercisable by statutory instrument.
118. *Subsection (3)* specifies that orders or regulations shall be subject to negative resolution procedure before the Scottish Parliament except in the case of the powers to make orders under the sections specified.
119. *Subsection (4)* provides that there is power, when making orders or regulations, to make different provision for different cases and for incidental, supplemental, consequential and transitional provisions.

#### ***Section 29: Financial provision***

120. *Section 29* provides for Scottish Ministers to pay the Secretary of State an amount which will be agreed between them to reimburse the Secretary of State for any expenditure or increased expenditure incurred by him as a result of this Act. This expenditure will be for the Tribunal.

#### ***Section 30: General saving for lawful conduct***

121. *Section 30* ensures that nothing in this Act makes any actions unlawful unless that is explicitly stated. The availability of an authorisation or a warrant does not mean that it is unlawful not to seek or obtain one. In this respect, the Act must be read with section 6 of the Human Rights Act 1998, which makes it unlawful to act in a way which is incompatible with a Convention right.

#### ***Section 31: Interpretation***

122. This section defines the terms used in the Act. Amongst other things, it defines “surveillance” and clarifies that this does not include references to:
- the use of a recording device by a covert human intelligence source to record any information obtained in the presence of the source (*subsection (3)(a)*);
  - activity involving interference with property or with wireless telegraphy which requires authorisation or warrant under Part III of the Police Act 1997.

#### ***Section 32: Short title and commencement***

123. *Subsection (2)* provides that the provisions of this Act will come into force on such day or days as the Scottish Ministers, by order, appoint.