



# Police Act 1997

## 1997 CHAPTER 50

### PART III

#### AUTHORISATION OF ACTION IN RESPECT OF PROPERTY

##### Modifications etc. (not altering text)

- C1** Pt. 3 (ss. 91-108) amended (S.) (29.9.2000) by 2000 asp 11, s. 24(2)(b) (with s. 30); S.S.I. 2000/341, art. 2
- C2** Pt. 3: power to apply (with modifications) conferred (1.10.2002) by Police Reform Act 2002 (c. 30), s. 19(2)(b); S.I. 2002/2306, art. 2(b)(v)
- C3** Pt. III modified (1.4.2004) by The Independent Police Complaints Commission (Investigatory Powers) Order 2004 (S.I. 2004/815), arts. 1(1), 2

#### *The Commissioners*

### 91 The Commissioners.

- (1) The Prime Minister [<sup>F1</sup>after consultation with the Scottish Ministers], shall appoint for the purposes of this Part—
  - (a) a Chief Commissioner, and
  - (b) such number of other Commissioners as the Prime Minister thinks fit.
- (2) The persons appointed under subsection (1) shall be persons who hold or have held high judicial office within the meaning of [<sup>F2</sup>Part 3 of the Constitutional Reform Act 2005 or are or have been members of the Judicial Committee of the Privy Council].
- (3) Subject to subsections (4) to (7), each Commissioner shall hold and vacate office in accordance with the terms of his appointment.
- (4) Each Commissioner shall be appointed for a term of three years.
- (5) A person who ceases to be a Commissioner (otherwise than under subsection (7)) may be reappointed under this section.

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- [<sup>F3</sup>(6) Subject to subsection (7), a Commissioner shall not be removed from office before the end of the term for which he is appointed unless—
- (a) a resolution approving his removal has been passed by each House of Parliament; and
  - (b) a resolution approving his removal has been passed by the Scottish Parliament.]
- (7) A Commissioner may be removed from office by the Prime Minister if after his appointment—
- (a) a bankruptcy order is made against him or his estate is sequestrated or he makes a composition or arrangement with, or grants a trust deed for, his creditors;
  - (b) a disqualification order under the <sup>M1</sup>Company Directors Disqualification Act 1986 or [<sup>F4</sup> the Company Directors Disqualification (Northern Ireland) Order 2002], or an order under section 429(2)(b) of the <sup>M2</sup>Insolvency Act 1986 (failure to pay under county court administration order), is made against him [<sup>F5</sup> or his disqualification undertaking is accepted under section 7 or 8 of the Company Directors Disqualification Act 1986][<sup>F6</sup> or under the Company Directors Disqualification (Northern Ireland) Order 2002]; or
  - (c) he is convicted in the United Kingdom, the Channel Islands or the Isle of Man of an offence and has passed on him a sentence of imprisonment (whether suspended or not).
- (8) The Secretary of State shall pay to each Commissioner [<sup>F7</sup>, other than a commissioner carrying out functions as mentioned in subsection (8A),] such allowances as the Secretary of State considers appropriate.
- [<sup>F8</sup>(8A) The Scottish Ministers shall pay to any Commissioner who carries out his functions under this Part wholly or mainly in Scotland such allowances as the Scottish Ministers consider appropriate.]
- (9) The Secretary of State shall, after consultation with the Chief Commissioner [<sup>F9</sup> and subject to the approval of the Treasury as to numbers], provide the Commissioners [<sup>F10</sup> and any Assistant Surveillance Commissioners holding office under section 63 of the Regulation of Investigatory Powers Act 2000][<sup>F11</sup>, other than any Commissioner carrying out functions as mentioned in subsection (9A),] with such staff as the Secretary of State considers necessary for the discharge of their functions.
- [<sup>F12</sup>(9A) The Scottish Ministers shall, after consultation with the Chief Commissioner, provide any Commissioner who carries out his functions under this Part wholly or mainly in Scotland with such staff as the Scottish Ministers consider necessary for the discharge of his functions.]
- (10) The decisions of the Chief Commissioner or, subject to sections 104 and 106, any other Commissioner (including decisions as to his jurisdiction) shall not be subject to appeal or liable to be questioned in any court.

#### Textual Amendments

**F1** Words in s. 91(1) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(a)**; S.I. 1998/3178, **art. 3**

**F2** Words in s. 91(2) substituted (1.10.2009) by Constitutional Reform Act 2005 (c. 4), s. 148(1), **Sch. 17 para. 27**; S.I. 2009/1604, art. 2(e)

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- F3** S. 91(6) substituted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(b)**; S.I. 1998/3178, **art. 3**
- F4** Words in s. 91(7)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 169** (with art. 10)
- F5** Words in s. 91(7)(b) inserted (2.4.2001) by 2000 c. 39, s. 8, **Sch. 4 Pt. II para. 22(2)**; S.I. 2001/766, **art. 2(1)(a)** (subject to the transitional provisions and savings in art. 3)
- F6** Words in s. 91(7)(b) inserted (E.W.S.) (with application in accordance with art. 1(2) of the amending S.I.) by The Insolvency Act 2000 (Company Directors Disqualification Undertakings) Order 2004 (S.I. 2004/1941), art. 1(2), **Sch. para. 10**
- F7** Words in s. 91(8) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(c)**; S.I. 1998/3178, **art. 3**
- F8** S. 91(8A) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(d)**; S.I. 1998/3178, **art. 3**
- F9** Words in s. 91(9) inserted (25.9.2000) by 2000 c. 23, s. 82, **Sch. 4 para. 8(1)(a)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F10** Words in s. 91(9) inserted (25.9.2000) by 2000 c. 23, s. 82, **Sch. 4 para. 8(1)(b)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F11** Words in s. 91(9) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(f)**; S.I. 1998/3178, **art. 3**
- F12** S. 91(9A) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(2)(g)**; S.I. 1998/3178, **art. 3**.

#### Modifications etc. (not altering text)

- C4** S. 91(3)-(8) applied (25.9.2000) by 2000 c. 23, s. 63(5) (with s. 82(3)); S.I. 2000/2543, **art. 2**

#### Commencement Information

- I1** S. 91 wholly in force at 22.2.1999; s. 91 not in force at Royal Assent see s.135; s. 91 (1)-(9) in force at 1.9.1997 by S.I. 1997/1930, **art. 2**(with art. 2(3)); S. 91(10) in force at 22.2.1999 by S.I. 1999/151, **art. 2**

#### Marginal Citations

- M1** 1986 c. 46.  
**M2** 1986 c. 45.

### Authorisations

#### 92 Effect of authorisation under Part III.

No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorised by an authorisation having effect under this Part.

#### 93 Authorisations to interfere with property etc.

- (1) Where subsection (2) applies, an authorising officer may authorise—
- (a) the taking of such action, in respect of such property in the relevant area, as he may specify,
  - <sup>[F13]</sup>(ab) the taking of such action falling within subsection (1A), in respect of property outside the relevant area, as he may specify, or]
  - (b) the taking of such action in the relevant area as he may specify, in respect of wireless telegraphy.

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- [<sup>F14</sup>(1A) The action falling within this subsection is action for maintaining or retrieving any equipment, apparatus or device the placing or use of which in the relevant area has been authorised under this Part or Part II of the Regulation of Investigatory Powers Act 2000 or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by Part II of that Act of 2000.
- (1B) Subsection (1) applies where the authorising officer is a [<sup>F15</sup>member of the staff of the Serious Organised Crime Agency,][<sup>F16</sup>an officer of Revenue and Customs][<sup>F17</sup>or an officer of the Office of Fair Trading] with the omission of—
- (a) the words “in the relevant area”, in each place where they occur; and
  - (b) paragraph (ab).]
- (2) This subsection applies where the authorising officer believes—
- (a) that it is necessary for the action specified to be taken [<sup>F18</sup>for the purpose of preventing or detecting] serious crime, and
  - [<sup>F19</sup>(b) that the taking of the action is proportionate to what the action seeks to achieve.]
- [<sup>F20</sup>(2A) Subsection (2) applies where the authorising officer is the Chief Constable or the Deputy Chief Constable of the [<sup>F21</sup>Police Service of Northern Ireland] as if the reference in subsection (2)(a) to preventing or detecting serious crime included a reference to the interests of national security.
- [ Where the authorising officer is the chairman of the Office of Fair Trading, the only
- <sup>F22</sup>(2AA) purpose falling within subsection (2)(a) is the purpose of preventing or detecting an offence under section 188 of the Enterprise Act 2002.]
- (2B) The matters to be taken into account in considering whether the requirements of subsection (2) are satisfied in the case of any authorisation shall include whether what it is thought necessary to achieve by the authorised action could reasonably be achieved by other means.]
- (3) An authorising officer shall not give an authorisation under this section except on an application made—
- [<sup>F23</sup>(za) if the authorising officer is within subsection (5)(a) to (c)—
    - (i) by a member of the officer's police force; or
    - (ii) in a case where the chief officer of police of that force (“the authorising force”) has made an agreement under section 23(1) of the Police Act 1996 with the chief officer of police of one or more other police forces, by a member of a collaborative force;]
  - [<sup>F24</sup>(zb) if the authorising officer is within subsection (5)(d), by a constable of the Police Service of Scotland;]
    - (a) if the authorising officer is within [<sup>F25</sup>subsection][<sup>F26</sup>(5)(e),][<sup>F27</sup>(ea) or (ee)], by a member of his police force,
  - [<sup>F28</sup>(aa) if the authorising officer is within subsection (5)(eb) to (ed), by a member, as the case may be, of the [<sup>F29</sup>Royal Navy Police], the Royal Military Police or the Royal Air Force Police;]
  - [<sup>F30</sup>(b) if the authorising officer is within subsection (5)(f), by a member of the staff of the Serious Organised Crime Agency,]
  - (d) if the authorising officer is within subsection (5)(h), by [<sup>F31</sup>an officer of Revenue and Customs][<sup>F32</sup>, or

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- (e) if the authorising officer is within subsection (5)(i), by an officer of the Office of Fair Trading.]
- [<sup>F33</sup>(ea) if the authorising officer is within subsection (5)(ia), by a staff officer of the Police Investigations and Review Commissioner.]
- <sup>F34</sup>(f) .....
- [<sup>F35</sup>(3A) For the purposes of subsection (3)(za)(ii)—
  - (a) a police force is a collaborative force if—
    - (i) its chief officer of police is a party to the agreement mentioned in that provision; and
    - (ii) its members are permitted by the terms of the agreement to make applications for authorisations under this section to the authorising officer of the authorising force; and
  - (b) a reference to a police force is to the following—
    - (i) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
    - (ii) the metropolitan police force; and
    - (iii) the City of London police force.]
- [<sup>F36</sup>(3ZA) An authorisation under this section may be given by the authorising officer within subsection (5)(ia) only where it relates to the taking of action in pursuance of paragraph (b)(i) of section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006.]
- <sup>F37</sup>(3B) .....
- <sup>F37</sup>(3C) .....
- <sup>F37</sup>(3D) .....
- <sup>F37</sup>(3E) .....
- (4) For the purposes of subsection (2), conduct which constitutes one or more offences shall be regarded as serious crime if, and only if,—
  - (a) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose, or
  - (b) the offence or one of the offences is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more,and, where the authorising officer is within subsection (5)(h), it relates to an assigned matter within the meaning of section 1(1) of the <sup>M3</sup>Customs and Excise Management Act 1979.
- (5) In this section “authorising officer” means—
  - (a) the chief constable of a police force maintained under section 2 of the <sup>M4</sup>Police Act 1996 (maintenance of police forces for areas in England and Wales except London);
  - (b) the Commissioner, or an Assistant Commissioner, of Police of the Metropolis;
  - (c) the Commissioner of Police for the City of London;
  - [<sup>F38</sup>(d) the chief constable of the Police Service of Scotland, or any deputy chief constable or assistant chief constable of the Police Service of Scotland who is designated for the purposes of this paragraph by the chief constable;]

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- (e) the Chief Constable or a Deputy Chief Constable of the [<sup>F21</sup>Police Service of Northern Ireland];
  - [<sup>F39</sup>(ea) the Chief Constable of the Ministry of Defence Police;
  - (eb) the Provost Marshal of the [<sup>F40</sup>Royal Navy Police];
  - (ec) the Provost Marshal of the Royal Military Police;
  - (ed) the Provost Marshal of the Royal Air Force Police;
  - (ee) the Chief Constable of the [<sup>F41</sup>British Transport Police;]
  - [<sup>F42</sup>(f) the Director General of the Serious Organised Crime Agency, or any member of the staff of that Agency who is designated for the purposes of this paragraph by that Director General;]
  - [<sup>F43</sup>(h) an officer of Revenue and Customs who is a senior official within the meaning of the Regulation of Investigatory Powers Act 2000 and who is designated for the purposes of this paragraph by the Commissioners for Her Majesty's Revenue and Customs;]
  - [<sup>F44</sup>(i) the chairman of the Office of Fair Trading.]
  - [<sup>F45</sup>(ia) the Police Investigations and Review Commissioner.]
  - [<sup>F46</sup>(j) .....
- (6) In this section “relevant area”—
- (a) in relation to a person within paragraph (a), (b) or (c) of subsection (5) [<sup>F47</sup>to whom an application is made by virtue of subsection (3)(za)(i)], means the area in England and Wales for which his police force is maintained;
  - [<sup>F48</sup>(aa) in relation to a person within any of those paragraphs to whom an application is made by virtue of subsection (3)(za)(ii), means the area in England and Wales—
    - (i) for which any collaborative force (within the meaning of subsection (3A)) is maintained; and
    - (ii) which is specified in relation to members of that force in the agreement mentioned in subsection (3)(za)(ii);]
    - (b) in relation to a person within paragraph (d) [<sup>F49</sup>or (ia) of subsection (5), means Scotland];
    - (c) in relation to a person within paragraph (e) of that subsection, means Northern Ireland;
    - [<sup>F50</sup>(ca) in relation to a person within paragraph (ea), means any place where, under section 2 of the <sup>M5</sup>Ministry of Defence Police Act 1987, the members of the Ministry of Defence Police have the powers and privileges of a constable;
    - (cb) in relation to a person within paragraph (ee), means the United Kingdom;]
    - [<sup>F51</sup>(cc) .....
    - [<sup>F52</sup>(d) .....
    - [<sup>F53</sup>(e) .....
    - [<sup>F54</sup>(f) .....
- and in each case includes the adjacent United Kingdom waters.
- [<sup>F55</sup>(6A) For the purposes of any authorisation by a person within paragraph (eb), (ec) or (ed) of subsection (5) property is in the relevant area or action in respect of wireless telegraphy is taken in the relevant area if, as the case may be—
- (a) the property is owned, occupied, in the possession of or being used by a person [<sup>F56</sup>who is subject to service law or is a civilian subject to service discipline]; or
  - (b) the action is taken in relation to the use of wireless telegraphy by such a person.

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[<sup>F57</sup>(6B) In subsection (6A) “subject to service law” and “civilian subject to service discipline” have the same meanings as in the Armed Forces Act 2006.]

(7) The powers conferred by, or by virtue of, this section are additional to any other powers which a person has as a constable either at common law or under or by virtue of any other enactment and are not to be taken to affect any of those other powers.]

#### Textual Amendments

- F13** S. 93(1)(ab) substituted for word “or” (25.9.2000) by 2000 c. 23, s. 75(2) (with s. 82(3)); S.I. 2000/2543, art. 2
- F14** S. 93(1A)(1B) inserted (25.9.2000) by 2000 c. 23, s. 75(3) (with s. 82(3)); S.I. 2000/2543, art. 2
- F15** Words in s. 93(1B) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 4 para. 97(2); S.I. 2006/378, art. 4(1), Sch. para. 10 (with art. 4(3))
- F16** Words in s. 93(1B) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 12 para. 1(a); S.I. 2008/219, art. 2(b)
- F17** Words in s. 93(1B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 200(2)(a), 279; S.I. 2003/1397, art. 2(1), Sch.
- F18** Words in s. 93(2)(a) substituted (25.9.2000) by 2000 c. 23, s. 75(4)(a) (with s. 82(3)); S.I. 2000/2543, art. 2
- F19** S. 93(2)(b) substituted (25.9.2000) by 2000 c. 23, s. 75(4)(b) (with s. 82(3)); S.I. 2000/2543, art. 2
- F20** S. 93(2A)(2B) inserted (25.9.2000) by 2000 c. 23, s. 75(5) (with s. 82(3)); S.I. 2000/2543, art. 2
- F21** Words in s. 93(2A)(5)(e) substituted (4.11.2001) by 2000 c. 32, s. 78(1), Sch. 6 para. 20(2)(b); S.R. 2001/396, art. 2, Sch.
- F22** S. 93(2AA) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 200(2)(b), 279; S.I. 2003/1397, art. 2(1), Sch.
- F23** S. 93(3)(za) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), ss. 6(2), 116(1); S.I. 2009/3096, art. 3(a)
- F24** S. 93(3)(zb) inserted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), Sch. 1 para. 6(2)(a)(i); and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 7 para. 14(2)(a)(i); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F25** Words in s. 93(3)(a) substituted (25.1.2010) by Policing and Crime Act 2009 (c. 26), ss. 6(3), 116(1); S.I. 2009/3096, art. 3(a)
- F26** Word in s. 93(3)(a) substituted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), Sch. 1 para. 6(2)(a)(ii); and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), sch. 7 para. 14(2)(a)(ii); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F27** Words in s. 93(3)(a) substituted (25.9.2000) by 2000 c. 23, s. 82(1), Sch. 4 para. 8(2)(a) (with s. 82(3)); S.I. 2000/2543, art. 2
- F28** S. 93(3)(aa) inserted (25.9.2000) by 2000 c. 23, s. 82, Sch. 4 para. 8(2)(b) (with s. 82(3)); S.I. 2000/2543, art. 2
- F29** Words in s. 93(3)(aa) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), s. 383(2), Sch. 16 para. 146(2); S.I. 2007/1442, art. 2(1)
- F30** S. 93(3)(b) substituted for s. 93(3)(b)(c) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 4 para. 97(3); S.I. 2006/378, art. 4(1), Sch. para. 10 (with art. 4(3))
- F31** Words in s. 93(3)(d) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), Sch. 12 para. 1(b); S.I. 2008/219, art. 2(b)
- F32** S. 93(3)(e) and word inserted (20.6.2003) by Enterprise Act 2002 (c. 40), ss. 200(2)(c), 279; S.I. 2003/1397, art. 2(1), Sch.
- F33** S. 93(3)(ea) inserted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), Sch. 1 para. 6(2)

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- (a)(iii); and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(2)(a)(iii)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F34** S. 93(3)(f) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F35** S. 93(3A) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 6(4)**, 116(1); S.I. 2009/3096, art. 3(a)
- F36** S. 93(3ZA) inserted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 6(2)(b)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(2)(b)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F37** S. 93(3B)-(3E) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F38** S. 93(5)(d) substituted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 6(2)(c)(i)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(2)(c)(i)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F39** S. 93(5)(ea)-(ee) inserted (25.9.2000) by 2000 c. 23, **s. 75(6)(a)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F40** Words in s. 93(5)(eb) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), s. 383(2), **Sch. 16 para. 146(3)**; S.I. 2007/1442, art. 2(1)
- F41** S. 93 amended (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **Sch. 5 para. 4**; S.I. 2004/1572, art. 3(jjj)
- F42** S. 93(5)(f) substituted for s. 93(5)(f)(g) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 97(4)**; S.I. 2006/378, art. 4(1), Sch. para. 10 (with art. 4(3))
- F43** S. 93(5)(h) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 12 para. 1(c)**; S.I. 2008/219, art. 2(b)
- F44** S. 93(5)(i) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), **ss. 200(2)(d)**, 279; S.I. 2003/1397, art. 2(1), **Sch.**
- F45** S. 93(5)(ia) inserted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 6(2)(c)(ii)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(2)(c)(ii)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F46** S. 93(5)(j) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F47** Words in s. 93(6)(a) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 6(5)(a)**, 116(1); S.I. 2009/3096, art. 3(a)
- F48** S. 93(6)(aa) inserted (25.1.2010) by Policing and Crime Act 2009 (c. 26), **ss. 6(5)(b)**, 116(1); S.I. 2009/3096, art. 3(a)
- F49** Words in s. 93(6)(b) substituted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 6(2)(d)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(2)(d)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F50** S. 93(6)(ca)(cb) inserted (25.9.2000) by 2000 c. 23, **s. 75(7)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F51** S. 93(6)(cc) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F52** S. 93(6)(d) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 4 para. 97(5), **Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), Sch. paras. 10, 13(dd) (with art. 4(3))
- F53** S. 93(6)(e) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 4 para. 97(5), **Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), Sch. paras. 10, 13(dd) (with art. 4(3))
- F54** S. 93(6)(f) and the word “and” immediately preceding it repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F55** S. 93(6A)(6B) inserted (25.9.2000) by 2000 c. 23, **s. 75(8)** (with s. 82(3)); S.I. 2000/2543, **art. 2**



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**F56** Words in s. 93(6A)(a) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by **Armed Forces Act 2006 (c. 52)**, s. 383(2), **Sch. 16 para. 146(4)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

**F57** S. 93(6B) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by **Armed Forces Act 2006 (c. 52)**, s. 383(2), **Sch. 16 para. 146(5)**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

**Modifications etc. (not altering text)**

**C5** S. 93 amended (S.) (29.9.2000) by **2000 asp 11, s. 23(5)** (with s. 30); S.S.I. 2000/341, **art. 2**

**Marginal Citations**

**M3** 1979 c. 2.

**M4** 1996 c. 16.

**M5** 1987 c. 4.

**94 Authorisations given in absence of authorising officer.**

(1) Subsection (2) applies where it is not reasonably practicable for an authorising officer to consider an application for an authorisation under section 93 and—

- (a) if the authorising officer is within paragraph (b) [<sup>F58</sup>, (e) or (f)] of section 93(5), it is also not reasonably practicable for the application to be considered by any of the other persons within the paragraph concerned; <sup>F59</sup> . . . [<sup>F60</sup>or]
- (b) if the authorising officer is within paragraph (a), [<sup>F61</sup>or (c)] of section 93(5), it is also not reasonably practicable for the application to be considered by his designated deputy <sup>F62</sup> ...
- <sup>F62</sup>(c) . . . . .

(2) Where this subsection applies, the powers conferred on the authorising officer by section 93 may, in an urgent case, be exercised—

- (a) where the authorising officer is within paragraph (a) [<sup>F63</sup>or (d)] of subsection (5) of that section, by a person holding the rank of assistant chief constable in his force;
- (b) where the authorising officer is within paragraph (b) of that subsection, by a person holding the rank of commander in the metropolitan police force;
- (c) where the authorising officer is within paragraph (c) of that subsection, by a person holding the rank of commander in the City of London police force;
- (d) where the authorising officer is within paragraph (e) of that subsection, by a person holding the rank of assistant chief constable in the [<sup>F64</sup>Police Service of Northern Ireland];
- [<sup>F65</sup>(da) where the authorising officer is within paragraph (ea) of that subsection, by a person holding the rank of deputy or assistant chief constable in the Ministry of Defence Police;
- (db) where the authorising officer is within paragraph (eb) of that subsection, by a person holding the position of assistant Provost Marshal in the [<sup>F66</sup>Royal Navy Police];
- (dc) where the authorising officer is within paragraph (ec) or (ed) of that subsection, by a person holding the position of deputy Provost Marshal in the Royal Military Police or, as the case may be, in the Royal Air Force Police;

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- (dd) where the authorising officer is within paragraph (ee) of that subsection, by a person holding the rank of deputy or assistant chief constable in the <sup>F67</sup>British Transport Police;]
- [<sup>F68</sup>(e) where the authorising officer is within paragraph (f) of that subsection, by a person designated for the purposes of this section by the Director General of the Serious Organised Crime Agency;]
- (f) where the authorising officer is within paragraph (h) of that subsection, [<sup>F69</sup>by an officer of Revenue and Customs who is a senior official within the meaning of the Regulation of Investigatory Powers Act 2000 and who is designated by the Commissioners for Her Majesty's Revenue and Customs] for the purposes of this section.
- [<sup>F70</sup>(g) where the authorising officer is within paragraph (i) of that subsection, by an officer of the Office of Fair Trading designated by it for the purposes of this section.]
- [<sup>F71</sup>(ga) where the authorising officer is within paragraph (ia) of that subsection, by a staff officer of the Police Investigations and Review Commissioner who is designated by the Commissioner for the purposes of this section.]
- <sup>F72</sup>(h) .....
- <sup>F73</sup>(3) .....
- (4) In subsection (1), “designated deputy”—
  - [<sup>F74</sup>(a) in the case of an authorising officer within paragraph (a) of section 93(5), means—
    - (i) the person who is the appropriate deputy chief constable for the purposes of section 12A(1) of the Police Act 1996, or
    - (ii) the person holding the rank of assistant chief constable designated to act under section 12A(2) of that Act;]
  - <sup>F75</sup>(aa) .....
  - (b) in the case of an authorising officer within paragraph (c) of section 93(5), means the person authorised to act <sup>F76</sup>... under section 25 of the <sup>M6</sup>City of London Police Act 1839; <sup>F77</sup>...
  - <sup>F78</sup>(c) .....
  - (d) .....
- <sup>F79</sup>(5) .....
- <sup>F79</sup>(6) .....
- <sup>F79</sup>(7) .....

**Textual Amendments**

- F58** Words in s. 94(1)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 4 para. 98\(2\)\(a\)](#); S.I. 2006/378, art. 4(1), Sch. para. 10
- F59** Word at the end of s. 94(1)(a) repealed (25.9.2000) by 2000 c. 23, s. 82(2), [Sch. 5 \(with s. 82\(3\)\)](#); S.I. 2000/2543, [art. 2](#)
- F60** Word in s. 94(1)(a) inserted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), [Sch. 4 para. 98\(2\)\(b\)](#); S.I. 2006/378, art. 4(1), Sch. para. 10
- F61** Words in s. 94(1)(b) substituted (E.W.N.I.) (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), art. 1(2), [Sch. 1 para.](#)

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- 6(3)(a)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(3)(a)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F62** S. 94(1)(c) and word repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 4 para. 98(2)(d), **Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), Sch. paras. 10, 13(dd)
- F63** Words in s. 94(2)(a) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F64** Words in s. 94(2)(d) substituted (4.11.2001) by 2000 c. 32, s. 78(1), **Sch. 6 para. 20(2)(b)**; S.R. 2001/396, art. 2, **Sch.**
- F65** S. 94(2)(da)-(dd) inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(4)(a)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F66** Words in s. 94(2)(db) substituted (4.6.2007) by Armed Forces Act 2006 (c. 52), s. 383(2), **Sch. 16 para. 147**; S.I. 2007/1442, art. 2(1)
- F67** S. 94 amended (1.7.2004) by Railways and Transport Safety Act 2003 (c. 20), **Sch. 5 para. 4**; S.I. 2004/1572, art. 3(jjj)
- F68** S. 94(2)(e) substituted for s. 94(2)(e)(ea) (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 98(3)**; S.I. 2006/378, art. 4(1), Sch. para. 10
- F69** Words in s. 94(2)(f) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 12 para. 2**; S.I. 2008/219, art. 2(b)
- F70** S. 94(2)(g) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), **ss. 200(3)**, 279; S.I. 2003/1397, art. 2(1), Sch.
- F71** S. 94(2)(ga) inserted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 6(3)(b)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(3)(b)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F72** S. 94(2)(h) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F73** S. 94(3) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 4 para. 98(4), **Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), Sch. paras. 10, 13(dd)
- F74** S. 94(4)(a) substituted (8.11.2006) by Police and Justice Act 2006 (c. 48), s. 53(2), **Sch. 14 para. 34**
- F75** S. 94(4)(aa) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F76** Words in s. 94(4) repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F77** Word in s. 94(4) repealed (30.9.1998) by 1998 c. 37, s. 113(3), s. 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2**
- F78** S. 94(4)(c) repealed (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 4 para. 98(4), **Sch. 17 Pt. 2**; S.I. 2006/378, art. 4(1), Sch. paras. 10, 13(dd)
- F79** S. 94(5)-(7) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Modifications etc. (not altering text)

- C6** S. 94 applied (*prosp.*) by 2000 c. 23, ss. 49, 83(2), **Sch. 2 para. 2(7)** (with s. 82(3))
- C7** S. 94 applied (1.10.2007) by Regulation of Investigatory Powers Act 2000 (c. 23), s. 83(2), **Sch. 2 para. 2(7)** (with s. 82(3)); S.I. 2007/2196, art. 2(a)

#### Marginal Citations

- M6** 1839 c. xciv.

## 95 Authorisations: form and duration etc.

- (1) An authorisation shall be in writing, except that in an urgent case an authorisation (other than one given by virtue of section 94) may be given orally.

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- (2) An authorisation shall, unless renewed under subsection (3), cease to have effect—
- (a) if given orally or by virtue of section 94, at the end of the period of 72 hours beginning with the time when it took effect;
  - (b) in any other case, at the end of the period of three months beginning with the day on which it took effect.
- (3) If at any time before an authorisation would cease to have effect the authorising officer who gave the authorisation, or in whose absence it was given, considers it necessary for the authorisation to continue to have effect for the purpose for which it was issued, he may, in writing, renew it for a period of three months beginning with the day on which it would cease to have effect.
- (4) A person shall cancel an authorisation given by him if satisfied that <sup>F80</sup>the authorisation is one in relation to which the requirements of paragraphs (a) and (b) of section 93(2) are no longer satisfied.]
- (5) An authorising officer shall cancel an authorisation given in his absence if satisfied that <sup>F80</sup>the authorisation is one in relation to which the requirements of paragraphs (a) and (b) of section 93(2) are no longer satisfied].
- (6) If the authorising officer who gave the authorisation is within paragraph (b) <sup>F81</sup><sup>F82</sup>, (d), (e)]<sup>F83</sup> or (f)] of section 93(5), the power conferred on that person by subsections (3) and (4) above shall also be exercisable by each of the other persons within the paragraph concerned.
- (7) Nothing in this section shall prevent a designated deputy from exercising the powers conferred on an authorising officer within paragraph (a) <sup>F84</sup>, (c) <sup>F85</sup> or (d) ]]<sup>F84</sup> or (c)] of section 93(5) by subsections (3), (4) and (5) above.

#### Textual Amendments

- F80** Words in s. 95(4)(5) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(6)(a)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F81** Words in s. 95(6) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(6)(b)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F82** Words in s. 95(6) substituted (E.W.N.I) (1.4.2013) by virtue of **The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013** (S.I. 2013/602), **art. 1(2)**, **Sch. 1 para. 6(4)**; and (S.) (1.4.2013) by virtue of **Police and Fire Reform (Scotland) Act 2012** (asp 8), s. 129(2), **sch. 7 para. 14(4)(a)**; S.S.I. 2013/51, **art. 2** (with transitional provisions and savings in S.S.I. 2013/121)
- F83** Words in s. 95(6) substituted (1.4.2006) by **Serious Organised Crime and Police Act 2005** (c. 15), s. 178(8), **Sch. 4 para. 99(2)**; S.I. 2006/378, **art. 4(1)**, **Sch. para. 10**
- F84** Words in s. 95(7) substituted (S.) (1.4.2013) by **Police and Fire Reform (Scotland) Act 2012** (asp 8), s. 129(2), **sch. 7 para. 14(4)(b)**; S.S.I. 2013/51, **art. 2** (with transitional provisions and savings in S.S.I. 2013/121)
- F85** Words in s. 95(7) substituted (1.4.2006) by **Serious Organised Crime and Police Act 2005** (c. 15), s. 178(8), **Sch. 4 para. 99(3)**; S.I. 2006/378, **art. 4(1)**, **Sch. para. 10**

## 96 Notification of authorisations etc.

- (1) Where a person gives, renews or cancels an authorisation, he shall, as soon as is reasonably practicable and in accordance with arrangements made by the Chief

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- Commissioner, give notice in writing that he has done so to a Commissioner appointed under section 91(1)(b).
- (2) Subject to subsection (3), a notice under this section shall specify such matters as the Secretary of State may by order prescribe.
  - (3) A notice under this section of the giving or renewal of an authorisation shall specify—
    - (a) whether section 97 applies to the authorisation or renewal, and
    - (b) where that section does not apply by virtue of subsection (3) of that section, the grounds on which the case is believed to be one of urgency.
  - (4) Where a notice is given to a Commissioner under this section, he shall, as soon as is reasonably practicable, scrutinise the notice.
  - (5) An order under subsection (2) shall be made by statutory instrument.
  - (6) A statutory instrument which contains an order under subsection (2) shall not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

#### Commencement Information

- I2** S. 96 wholly in force at 22.2.1999; s. 96 not in force at Royal Assent see s. 135; s. 96 in force for certain purposes at 1.9.1997 by [S.I. 1997/1930](#), [art. 2](#)(with art. 2(3)); s. 96 in force at 22.2.1999 insofar as not already in force by [S.I. 1999/151](#), [art. 2](#)

#### *Authorisations requiring approval*

### **97 Authorisations requiring approval.**

- (1) An authorisation to which this section applies shall not take effect until—
  - (a) it has been approved in accordance with this section by a Commissioner appointed under section 91(1)(b), and
  - (b) the person who gave the authorisation has been notified under subsection (4).
- (2) Subject to subsection (3), this section applies to an authorisation if, at the time it is given, the person who gives it believes—
  - (a) that any of the property specified in the authorisation—
    - (i) is used wholly or mainly as a dwelling or as a bedroom in a hotel, or
    - (ii) constitutes office premises, or
  - (b) that the action authorised by it is likely to result in any person acquiring knowledge of—
    - (i) matters subject to legal privilege,
    - (ii) confidential personal information, or
    - (iii) confidential journalistic material.
- (3) This section does not apply to an authorisation where the person who gives it believes that the case is one of urgency.
- (4) Where a Commissioner receives a notice under section 96 which specifies that this section applies to the authorisation, he shall as soon as is reasonably practicable—
  - (a) decide whether to approve the authorisation or refuse approval, and

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- (b) give written notice of his decision to the person who gave the authorisation.
- (5) A Commissioner shall approve an authorisation if, and only if, he is satisfied that there are reasonable grounds for believing the matters specified in section 93(2).
- (6) Where a Commissioner refuses to approve an authorisation, he shall, as soon as is reasonably practicable, make a report of his findings to the authorising officer who gave it or in whose absence it was given<sup>F86</sup> . . .
- [<sup>F87</sup>(6A) The reference in subsection (6) to the authorising officer who gave the authorisation or in whose absence it was given shall be construed, in the case of an authorisation given by or in the absence of a person within paragraph (b) [<sup>F88</sup>or (e)] of section 93(5), as a reference to the Commissioner of Police [<sup>F89</sup>or, as the case may be, Chief Constable] mentioned in the paragraph concerned.]
- [<sup>F90</sup>(6B) The reference in subsection (6) to the authorising officer who gave the authorisation or in whose absence it was given shall be construed—
- (a) in the case of an authorisation given by a person within paragraph (f) of section 93(5), as a reference to that person, and
- (b) in the case of an authorisation given in the absence of such a person, as a reference to a member of the staff of the Serious Organised Crime Agency who is designated for the purposes of this section by the Director General of that Agency.]
- (7) This section shall apply in relation to a renewal of an authorisation as it applies in relation to an authorisation (the references in subsection (2)(a) and (b) to the authorisation being construed as references to the authorisation renewed).
- (8) In this section—
- “office premises” has the meaning given in section 1(2) of the<sup>M7</sup>Offices, Shops and Railway Premises Act 1963;
- “hotel” means premises used for the reception of guests who desire to sleep in the premises.

#### Textual Amendments

- F86** Words in s. 97(6) repealed (25.9.2000) by 2000 c. 23, s. 82(1)(2), Sch. 4 para. 8(7), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F87** S. 97(6A) inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 82(3)**; S.I. 2000/2543, **art. 2**
- F88** Words in s. 97(6A) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 100(2)(a)**; S.I. 2006/378, art. 4(1), Sch. para. 10
- F89** Words in s. 97(6A) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 100(2)(b)**; S.I. 2006/378, art. 4(1), Sch. para. 10
- F90** S. 97(6B) inserted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 100(3)**; S.I. 2006/378, art. 4(1), Sch. para. 10

#### Marginal Citations

- M7** 1963 c. 41.

## 98 Matters subject to legal privilege.

- (1) Subject to subsection (5) below, in section 97 “matters subject to legal privilege” means matters to which subsection (2), (3) or (4) below applies.

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- (2) This subsection applies to communications between a professional legal adviser and—
  - (a) his client, or
  - (b) any person representing his client,which are made in connection with the giving of legal advice to the client.
- (3) This subsection applies to communications—
  - (a) between a professional legal adviser and his client or any person representing his client, or
  - (b) between a professional legal adviser or his client or any such representative and any other person,which are made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- (4) This subsection applies to items enclosed with or referred to in communications of the kind mentioned in subsection (2) or (3) and made—
  - (a) in connection with the giving of legal advice, or
  - (b) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- (5) For the purposes of section 97—
  - (a) communications and items are not matters subject to legal privilege when they are in the possession of a person who is not entitled to possession of them, and
  - (b) communications and items held, or oral communications made, with the intention of furthering a criminal purpose are not matters subject to legal privilege.

## **99 Confidential personal information.**

- (1) In section 97 “confidential personal information” means—
  - (a) personal information which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office, and which he holds in confidence, and
  - (b) communications as a result of which personal information—
    - (i) is acquired or created as mentioned in paragraph (a), and
    - (ii) is held in confidence.
- (2) For the purposes of this section “personal information” means information concerning an individual (whether living or dead) who can be identified from it and relating—
  - (a) to his physical or mental health, or
  - (b) to spiritual counselling or assistance given or to be given to him.
- (3) A person holds information in confidence for the purposes of this section if he holds it subject—
  - (a) to an express or implied undertaking to hold it in confidence, or
  - (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment (including an enactment contained in an Act passed after this Act).

## **100 Confidential journalistic material.**

- (1) In section 97 “confidential journalistic material” means—

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- (a) material acquired or created for the purposes of journalism which—
    - (i) is in the possession of persons who acquired or created it for those purposes,
    - (ii) is held subject to an undertaking, restriction or obligation of the kind mentioned in section 99(3), and
    - (iii) has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism, and
  - (b) communications as a result of which information is acquired for the purposes of journalism and held as mentioned in paragraph (a)(ii).
- (2) For the purposes of subsection (1), a person who receives material, or acquires information, from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

*Code of Practice*

<sup>F91</sup> **101** .....

**Textual Amendments**  
**F91** S. 101 repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

*Complaints etc.*

<sup>F92</sup> **102** .....

**Textual Amendments**  
**F92** S. 102 repealed (25.9.2000) by 2000 c. 23, ss. 70(2)(c), 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2** (and by art. 6(1) of that S.I. the repeal is expressed to be brought into force on 2.10.2000 subject to the provisions of art. 6(2)-(5))

**103 Quashing of authorisations etc.**

- (1) Where, at any time, a Commissioner appointed under section 91(1)(b) is satisfied that, at the time an authorisation was given or renewed, there were no reasonable grounds for believing the matters specified in section 93(2), he may quash the authorisation or, as the case may be, renewal.
- (2) Where, in the case of an authorisation or renewal to which section 97 does not apply, a Commissioner appointed under section 91(1)(b) is at any time satisfied that, at the time the authorisation was given or, as the case may be, renewed,—
  - (a) there were reasonable grounds for believing any of the matters specified in subsection (2) of section 97, and
  - (b) there were no reasonable grounds for believing the case to be one of urgency for the purposes of subsection (3) of that section,



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he may quash the authorisation or, as the case may be, renewal.

- (3) Where a Commissioner quashes an authorisation or renewal under subsection (1) or (2), he may order the destruction of any records relating to information obtained by virtue of the authorisation (or, in the case of a renewal, relating wholly or partly to information so obtained after the renewal) other than records required for pending criminal or civil proceedings.
- (4) If a Commissioner appointed under section 91(1)(b) is satisfied that, at any time after an authorisation was given or, in the case of an authorisation renewed under section 95, after it was renewed, there were no reasonable grounds for believing the matters specified in section 93(2), he may cancel the authorisation.
- (5) Where—
  - (a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (1) or (2)), and
  - (b) a Commissioner appointed under section 91(1)(b) is satisfied that, at any time during the period of the authorisation, there were no reasonable grounds for believing the matters specified in section 93(2),he may order the destruction of any records relating, wholly or partly, to information which was obtained by virtue of the authorisation after that time (other than records required for pending criminal or civil proceedings).
- (6) Where a Commissioner exercises his powers under subsection (1), (2) or (4), he shall, if he is satisfied that there are reasonable grounds for doing so, order that the authorisation shall be effective, for such period as he shall specify, so far as it authorises the taking of action to retrieve anything left on property in accordance with the authorisation.
- (7) Where a Commissioner exercises a power conferred by this section, he shall, as soon as is reasonably practicable, make a report of his findings—
  - (a) to the authorising officer who gave the authorisation or in whose absence it was given, and
  - (b) to the Chief Commissioner;[<sup>F93</sup>and subsection (6A) of section 97 shall apply for the purposes of this subsection as it applies for the purposes of subsection (6) of that section.]
- (8) Where—
  - (a) a decision is made under subsection (1) or (2) and an order for the destruction of records is made under subsection (3), or
  - (b) a decision to order the destruction of records is made under subsection (5),the order shall not become operative until the period for appealing against the decision has expired and, where an appeal is made, a decision dismissing it has been made by the Chief Commissioner.
- (9) A Commissioner may exercise any of the powers conferred by this section notwithstanding any approval given under section 97.

#### Textual Amendments

**F93** Words in s. 103(7) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(8)** (with s. 82(3)); S.I. 2000/2543, **art. 2**

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*Appeals*

**104 Appeals by authorising officers.**

- (1) An authorising officer who gives an authorisation, or in whose absence it is given, may, within the prescribed period, appeal to the Chief Commissioner against—
  - (a) any refusal to approve the authorisation or any renewal of it under section 97;
  - (b) any decision to quash the authorisation, or any renewal of it, under subsection (1) of section 103;
  - (c) any decision to quash the authorisation, or any renewal of it, under subsection (2) of that section;
  - (d) any decision to cancel the authorisation under subsection (4) of that section;
  - (e) any decision to order the destruction of records under subsection (5) of that section;
  - (f) any refusal to make an order under subsection (6) of that section;
  - <sup>F94</sup>(g) .....
- (2) In subsection (1), “the prescribed period” means the period of seven days beginning with the day on which the refusal, decision or, as the case may be, determination appealed against is reported to the authorising officer.
- (3) In determining an appeal within subsection (1)(a), the Chief Commissioner shall, if he is satisfied that there are reasonable grounds for believing the matters specified in section 93(2), allow the appeal and direct the Commissioner to approve the authorisation or renewal under that section.
- (4) In determining—
  - (a) an appeal within subsection (1)(b), <sup>F95</sup> . . .
  - (b) .....
 the Chief Commissioner shall allow the appeal unless he is satisfied that, at the time the authorisation was given or, as the case may be, renewed there were no reasonable grounds for believing the matters specified in section 93(2).
- (5) In determining—
  - (a) an appeal within subsection (1)(c), <sup>F95</sup> . . .
  - (b) .....
 the Chief Commissioner shall allow the appeal unless he is satisfied as mentioned in section 103(2).
- (6) In determining—
  - (a) an appeal within subsection (1)(d) or (e), <sup>F95</sup> . . .
  - (b) .....
 the Chief Commissioner shall allow the appeal unless he is satisfied that at the time to which the decision relates there were no reasonable grounds for believing the matters specified in section 93(2).
- (7) In determining an appeal within subsection (1)(f), the Chief Commissioner shall allow the appeal and order that the authorisation shall be effective to the extent mentioned in section 103(6), for such period as he shall specify, if he is satisfied that there are reasonable grounds for making such an order.
- (8) Where an appeal is allowed under this section, the Chief Commissioner shall—

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- (a) in the case of an appeal within subsection (1)(b) or (c), also quash any order made by the Commissioner to destroy records relating to information obtained by virtue of the authorisation concerned, <sup>F96</sup> . . .
- (b) . . . . .

**Textual Amendments**

- F94** S. 104(1)(g) repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F95** S. 104(4)(b)(5)(b)(6)(b) and the word “or” immediately preceding them repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F96** S. 104(8)(b) and the word “and” immediately preceding it repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

**105 Appeals by authorising officers: supplementary.**

- (1) Where the Chief Commissioner determines an appeal under section 104—
  - (a) he shall give notice of his determination—
    - (i) to the authorising officer concerned, [<sup>F97</sup>and]
    - (ii) to the Commissioner against whose refusal, decision or determination the appeal was made, <sup>F98</sup> . . .
    - (iii) . . . . .
  - (b) if he dismisses the appeal, he shall make a report of his findings—
    - (i) to the authorising officer concerned,
    - (ii) to the Commissioner against whose refusal, decision or determination the appeal was made, and
    - (iii) under section 107(2), to the Prime Minister [and the Scottish Ministers].
- (2) Subject to subsection (1)(b), the Chief Commissioner shall not give any reasons for a determination under section 104.
- (3) Nothing in section 104 shall prevent a designated deputy from exercising the powers conferred by subsection (1) of that section on an authorising officer within paragraph (a) [<sup>F99</sup>or (c)] of section 93(5).

**Textual Amendments**

- F97** Word in s. 105(1)(a)(i) inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(9)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F98** S. 105(1)(a)(iii) and the word “and” immediately preceding it repealed (25.9.2000) by 2000 c. 23, s. 82(1)(2), **Sch. 4 para. 8(9), Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F99** Words in s. 105(3) substituted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 6(5)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(5)**; S.S.I. 2013/51, **art. 2** (with transitional provisions and savings in S.S.I. 2013/121)

**Modifications etc. (not altering text)**

- C8** Words in s. 105(1)(b)(iii) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(3)**; S.I. 1998/3178, **art. 3**

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<sup>F100</sup>106 .....

**Textual Amendments**  
**F100** S. 106 repealed (25.9.2000) by 2000 c. 23, s. 82(2), Sch. 5 (with s. 82(3)); S.I. 2000/2543, art. 2

*General*

**107 Supplementary provisions relating to Commissioners.**

- (1) The Chief Commissioner shall keep under review the performance of functions under this Part.
- (2) The Chief Commissioner shall make an annual report on [<sup>F101</sup>the matters with which he is concerned] to the Prime Minister [<sup>F102</sup>and to the Scottish Ministers] and may at any time report to him [<sup>F102</sup>or them (as the case may require)] on [<sup>F101</sup>anything relating to any of those matters].
- (3) The Prime Minister shall lay before each House of Parliament a copy of each annual report made by the Chief Commissioner under subsection (2) together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (4) below.
- [<sup>F103</sup>(3A) The Scottish Ministers shall lay before the Scottish Parliament a copy of each annual report made by the Chief Commissioner under subsection (2), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (4) below.]
- (4) The Prime Minister may exclude a matter from the copy of a report as laid before each House of Parliament, if it appears to him, after consultation with the Chief Commissioner [<sup>F104</sup>and the Scottish Ministers], that the publication of that matter in the report would be prejudicial to [<sup>F105</sup>any of the purposes for which authorisations may be given or granted under this Part of this Act or Part II of the Regulation of Investigatory Powers Act 2000 or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by Part II of that Act of 2000 or] to the discharge of—
  - (a) the functions of any [<sup>F106</sup>local policing body or][<sup>F107</sup>the Scottish Police Authority],
  - (b) the functions of the [<sup>F108</sup>Serious Organised Crime Agency], or
  - [<sup>F109</sup>(bza) the functions of the Police Investigations and Review Commissioner under section 33A(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006,]
  - <sup>F110</sup>(ba) .....
  - (c) the duties of [<sup>F111</sup>the Commissioners for Her Majesty's Revenue and Customs.]
- (5) Any person having functions under this Part, and any person taking action in relation to which an authorisation was given, shall comply with any request of a Commissioner for documents or information required by him for the purpose of enabling him to discharge his functions.
- [<sup>F112</sup>(5A) It shall be the duty of—

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- (a) every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Chief Commissioner,
- (b) every person who has engaged in conduct with the authority of such an authorisation,
- (c) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a),
- (d) every person who holds or has held any office, rank or position with any public authority for whose benefit (within the meaning of Part II of the Regulation of Investigatory Powers Act 2000) activities which are or may be subject to any such review have been or may be carried out, and
- (e) every person to whom a notice under section 49 of the Regulation of Investigatory Powers Act 2000 (notices imposing a disclosure requirement in respect of information protected by a key) has been given in relation to any information obtained by conduct to which such an authorisation relates,

to disclose or provide to the Chief Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.

(5B) It shall be the duty of every 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 that tribunal) as that tribunal may require—

- (a) in connection with the investigation of any matter by that tribunal; or
- (b) otherwise for the purposes of that tribunal’s consideration or determination of any matter.

(5C) In this section “public authority” means any public authority within the meaning of section 6 of the <sup>M8</sup>Human Rights Act 1998 (acts of public authorities) other than a court or tribunal.]

<sup>F113</sup>(6) .....

#### Textual Amendments

- F101** Words in s. 107(2) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(10)(a)(i)(ii)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F102** Words in s. 107(2) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(5)(a)(i)(ii)**; S.I. 1998/3178, **art. 3**
- F103** S. 107(3A) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(5)(b)**; S.I. 1998/3178, **art. 3**
- F104** Words in s. 107(4) inserted (1.7.1999) by S.I. 1999/1747, arts. 1, 3, **Sch. 6 Pt. II para. 2(5)(c)**; S.I. 1998/3178, **art. 3**
- F105** Words in s. 107(4) substituted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(10)(b)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F106** Words in s. 107(4)(a) inserted (16.1.2012) by Police Reform and Social Responsibility Act 2011 (c. 13), s. 157(1), **Sch. 16 para. 222**; S.I. 2011/3019, art. 3, Sch. 1
- F107** Words in s. 107(4)(a) substituted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 6(6)(a)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(6)(a)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F108** Words in s. 107(4)(b) substituted (1.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), **Sch. 4 para. 102**; S.I. 2006/378, art. 4(1), Sch. para. 10

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- F109** S. 107(4)(bza) inserted (E.W.N.I.) (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 1 para. 6(6)(b)**; and (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 7 para. 14(6)(b)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F110** S. 107(4)(ba) repealed (S.) (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F111** Words in s. 107(4)(c) substituted (15.2.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 12 para. 3**; S.I. 2008/219, art. 2(b)
- F112** S. 107(5A)-(5C) inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(10)(c)(11)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F113** S. 107(6) repealed (25.9.2000) by 2000 c. 23, s. 82(2), **Sch. 5** (with s. 82(3)); S.I. 2000/2543, **art. 2**

**Modifications etc. (not altering text)**

- C9** S. 107(3)(4) applied (25.9.2000) by 2000 c. 23, **s. 39(3)** (with s. 82(3)); S.I. 2000/2543, **art. 2**

**Marginal Citations**

- M8** 1998 c. 42.

## 108 Interpretation of Part III.

(1) In this Part—

[<sup>F114</sup>“Assistant Commissioner of Police of the Metropolis” includes the Deputy Commissioner of Police of the Metropolis;

“authorisation” means an authorisation under section 93;

“authorising officer” has the meaning given by section 93(5);

“criminal proceedings” includes [<sup>F115</sup>proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006;]

<sup>F116</sup> ...

“designated deputy” has the meaning given in section 94(4);

“United Kingdom waters” has the meaning given in section 30(5) of the <sup>M9</sup>Police Act 1996; and

“wireless telegraphy” has the same meaning as in [<sup>F117</sup>the Wireless Telegraphy Act 2006] and, in relation to wireless telegraphy, “interfere” has the same meaning as in that Act.

(2) Where, under this Part, notice of any matter is required to be given in writing, the notice may be transmitted by electronic means.

(3) For the purposes of this Part, an authorisation (or renewal) given—

(a) by the designated deputy of an authorising officer, or

(b) by a person on whom an authorising officer’s powers are conferred by section 94,

shall be treated as an authorisation (or renewal) given in the absence of the authorising officer concerned; and references to the authorising officer in whose absence an authorisation (or renewal) was given shall be construed accordingly.

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#### Textual Amendments

- F114** In s. 108(1) definition of "Assistant Commissioner of Police of the Metropolis" inserted (25.9.2000) by 2000 c. 23, s. 82(1), **Sch. 4 para. 8(12)** (with s. 82(3)); S.I. 2000/2543, **art. 2**
- F115** Words in s. 108(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by **Armed Forces Act 2006** (c. 52), s. 383(2), **Sch. 16 para. 148**; S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4
- F116** Words in s. 108(1) repealed (15.2.2008) by **Serious Crime Act 2007** (c. 27), s. 94(1), Sch. 12 para. 4, **Sch. 14**; S.I. 2008/219, art. 2(b)(d)(i)
- F117** Words in s. 108(1) substituted (8.2.2007) by **Wireless Telegraphy Act 2006** (c. 36), s. 126(2), **Sch. 7 para. 19**

#### Modifications etc. (not altering text)

- C10** S. 108(1) modified (24.4.2009 for specified purposes, 31.10.2009 in so far as not already in force) by **The Armed Forces Act 2006 (Transitional Provisions etc) Order 2009** (S.I. 2009/1059), art. 1(3), **Sch. 1 para. 41**

#### Marginal Citations

- M9** 1996 c. 16.

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**Changes to legislation:**

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