

2015 No. 32

INVESTIGATORY POWERS

**The Regulation of Investigatory Powers (Modification of
Authorisation Provisions: Legal Consultations) (Scotland) Order
2015**

Made - - - - *27th January 2015*

Coming into force - - *2nd February 2015*

The Scottish Ministers make the following Order in exercise of the power conferred by section 27(1)(b) of the Regulation of Investigatory Powers (Scotland) Act 2000^(a) and all other powers enabling them to do so.

In accordance with section 27(2) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Regulation of Investigatory Powers (Modification of Authorisation Provisions: Legal Consultations) (Scotland) Order 2015 and comes into force on 2nd February 2015.

Interpretation

2. In this Order—

“inquiry” means an inquiry or hearing held under a provision contained in an enactment;

“legal consultation” means—

- (a) a consultation between a professional legal adviser and that adviser’s client or any person representing that client; or
- (b) a consultation between a professional legal adviser or that adviser’s client or any person representing that client and a registered medical practitioner, made in connection with, or in contemplation of, legal proceedings and for the purposes of such proceedings;

“premises” has the meaning given by section 31(10) of the Act; and

“the Act” means the Regulation of Investigatory Powers (Scotland) Act 2000.

Directed surveillance to be treated as intrusive surveillance

3.—(1) Directed surveillance which is to be carried out on any part of premises specified in paragraph (2) is to be treated as intrusive surveillance for the purposes of the Act if, at any time

(a) 2000 asp 11.

when the surveillance is to be carried out, that part of those premises is to be used for a legal consultation.

(2) The premises are—

- (a) any premises in which individuals who are serving sentences of imprisonment or detention, remanded in custody or remanded or committed for trial or sentence, may be detained;
- (b) a legalised police cell within the meaning of section 14(1) of the Prisons (Scotland) Act 1989(a);
- (c) any premises in which individuals may be detained under paragraph 16(1), (1A) or (2) of Schedule 2 or paragraph 2(2) or (3) of Schedule 3 to the Immigration Act 1971(b) or section 36(1) of the UK Borders Act 2007(c);
- (d) any premises in which individuals may be detained under Part VI of the Criminal Procedure (Scotland) Act 1995(d) or the Mental Health (Care and Treatment) (Scotland) Act 2003(e);
- (e) a police station;
- (f) the place of business of any professional legal adviser; and
- (g) any premises used for the sittings and business of any court, tribunal or inquiry.

MICHAEL MATHESON

A member of the Scottish Government

St Andrew's House,
Edinburgh
27th January 2015

(a) 1989 c.45, there are amendments to section 14 which are not relevant to this Order.
(b) 1971 c.77; paragraph 16 (1A) and (2) of Schedule 2 were inserted by paragraph 60 of Schedule 14 to, and section 140(1) of, the Immigration and Asylum Act 1999 c.33 respectively; paragraph 16(2) was amended by section 73(5) of the Nationality, Immigration and Asylum Act 2002 c.41; paragraph 2(2) of Schedule 3 was amended by paragraph 7 of Schedule 7 to the Nationality, Immigration and Asylum Act 2002 c.41 and section 34(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 c.19; paragraph 3 of Schedule 3 was amended by section 54(3) of the Immigration and Asylum Act 1999 c.33.
(c) 2007 c.30.
(d) 1995 c.46.
(e) 2003 asp 13.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 27(1) of the Regulation of Investigatory Powers (Scotland) Act 2000 (“the Act”) confers on the Scottish Ministers the power to provide that any description of directed surveillance be treated as intrusive surveillance.

This Order exercises that power in relation to surveillance which is carried out on premises at a time when any part of those premises are used for a legal consultation. The effect is that covert surveillance which is to be carried out on such premises must be authorised in accordance with the procedures set out in section 10 of the Act. In particular, such surveillance may be authorised only by the chief constable of the Police Service of Scotland (or another senior officer designated by the chief constable) or by the Police Investigations and Review Commissioner and may be authorised only if necessary to prevent or detect serious crime. By virtue of section 13 and 14 of the Act, authorisations for covert surveillance on the premises listed in article 3(2) will not, except in urgent cases, take effect unless notified to and approved by an ordinary Surveillance Commissioner.

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