

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

OTHER AUTHORISATIONS

Part V: Miscellaneous and Supplemental

Section 73: Conduct in relation to Wireless Telegraphy

341. This section amends Section 5 of the Wireless Telegraphy Act 1949 and is intended to ensure that the interception provisions of that Act comply with the Human Rights Act 1998.
342. *Subsection (1)* transfers the words of the existing section 5 of the Wireless Telegraphy Act to a new subsection 5(1). It also has the effect of removing the general authority to intercept wireless telegraphy which existed for persons acting in their duty as a servant of the Crown, and of changing the authority level which is required to authorise interception of wireless telegraphy from “under the authority of the Secretary of State” to “under the authority of a designated person”.

“Designated person” is defined in the inserted section 5(12)

343. *Subsection (2)* creates new subsections 5(2) to 5(12) to the Wireless Telegraphy Act 1949 as follows:
- 5(2) restricts the ability of a designated person to authorise interception of wireless telegraphy to activity which cannot be warranted or authorised under this Act;
 - 5(3) requires that where the an authorisation is granted under the Wireless Telegraphy Act 1949, consideration must be given to both the necessity and proportionality of the interception in the context of what is sought to be achieved through it;
 - 5(4) explains the purposes for which an authorisation under the Wireless Telegraphy Act 1949 may be granted;
 - 5(5) requires that where a requirement exists to intercept wireless telegraphy which would not meet one of the tests in 5(4) above but would fit within the criteria of this subsection, a separate authority must be sought;
 - 5(6) requires a designated person to consider whether that which is sought to be achieved through the interception could be done in another way;
 - 5(10) follows on from subsection (2) and explains that where interception of wireless telegraphy is required to be authorised under the Regulation of Investigatory Powers Act, the fact that the applicant cannot be authorised in this way because he is not mentioned as one of the bodies to which the Act applies does not mean that he can rely upon section 5 to obtain authorisation;

These notes refer to the Regulation of Investigatory Powers Act 2000 (c.23) which received Royal Assent on 28 July 2000

- 5(11) explains the meaning of “separate authority”.