



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART IV

#### SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES

##### *Codes of practice*

#### **71 Issue and revision of codes of practice.**

- (1) The Secretary of State shall issue one or more codes of practice relating to the exercise and performance of the powers and duties mentioned in subsection (2).
- (2) Those powers and duties are those (excluding any power to make subordinate legislation [<sup>F1</sup>and subject to subsection (10)]) that are conferred or imposed otherwise than on [<sup>F2</sup>a Judicial Commissioner ||<sup>F3</sup>or the relevant judicial authority (within the meaning of section 23A or 32A)] by or under—
  - (a) Parts I to III of this Act;
  - (b) section 5 of the <sup>M1</sup>Intelligence Services Act 1994 (warrants for interference with property or wireless telegraphy for the purposes of the intelligence services); and
  - (c) Part III of the <sup>M2</sup>Police Act 1997 (authorisation by the police or [<sup>F4</sup>Her Majesty's Revenue and Customs] of interference with property or wireless telegraphy).

[<sup>F5</sup>(2A) A code of practice under subsection (1) that relates (expressly or otherwise) to the exercise and performance, in connection with the prevention or detection of serious crime, of powers and duties conferred or imposed by or under Part 1 of this Act—

- (a) shall include provision designed to protect the public interest in the confidentiality of journalistic sources;

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- (b) shall not be issued unless the Secretary of State has first consulted the Interception of Communications Commissioner and considered any relevant report made to the Prime Minister under section 58.]
- (3) Before issuing a code of practice under subsection (1), the Secretary of State shall—
- (a) prepare and publish a draft of that code; and
  - (b) consider any representations made to him about the draft;
- and the Secretary of State may incorporate in the code finally issued any modifications made by him to the draft after its publication.
- (4) The Secretary of State shall lay before both Houses of Parliament every draft code of practice prepared and published by him under this section.
- (5) A code of practice issued by the Secretary of State under this section shall not be brought into force except in accordance with an order made by the Secretary of State.
- (6) An order under subsection (5) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the bringing into force of the code brought into force by that order.
- (7) The Secretary of State may from time to time—
- (a) revise the whole or any part of a code issued under this section; and
  - (b) issue the revised code.
- (8) Subsections [F6(2A)] to (6) shall apply (with appropriate modifications) in relation to the issue of any revised code under this section as they apply in relation to the first issue of such a code.
- (9) The Secretary of State shall not make an order containing provision for any of the purposes of this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- [F7(10) A code of practice under this section may not relate to any matter which is to be dealt with by guidance of the Interception of Communications Commissioner by virtue of paragraph 7 of Schedule A1.]

#### Textual Amendments

- F1** Words in s. 71(2) inserted (17.6.2011) by [The Regulation of Investigatory Powers \(Monetary Penalty Notices and Consents for Interceptions\) Regulations 2011 \(S.I. 2011/1340\)](#), regs. 1(2), **2(2)**
- F2** Words in s. 71(2) substituted (1.9.2017) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), **Sch. 10 para. 81** (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), reg. 2(j)
- F3** Words in s. 71(2) inserted (1.11.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), s. 120, **Sch. 9 para. 14** (with s. 97); [S.I. 2012/2075](#), art. 4(d)
- F4** Words in s. 71(2)(c) substituted (15.2.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 88, 94, **Sch. 12 para. 25**; [S.I. 2008/219](#), art. 2(b)
- F5** S. 71(2A) inserted (3.3.2015) by [Serious Crime Act 2015 \(c. 9\)](#), ss. **83**, 88(5)(d) (with s. 86(12))
- F6** Word in s. 71(8) substituted (3.5.2015) by [Serious Crime Act 2015 \(c. 9\)](#), s. 88(1), **Sch. 4 para. 18**; [S.I. 2015/820](#), reg. 2(r)(iv)
- F7** S. 71(10) inserted (17.6.2011) by [The Regulation of Investigatory Powers \(Monetary Penalty Notices and Consents for Interceptions\) Regulations 2011 \(S.I. 2011/1340\)](#), regs. 1(2), **2(3)**

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

- C1** S. 71 modified (31.7.2014) by [The Data Retention Regulations 2014 \(S.I. 2014/2042\)](#), regs. 1(2), **10(3)**, 15(7)
- C2** S. 71(2) modified (31.7.2014) by [The Data Retention Regulations 2014 \(S.I. 2014/2042\)](#), regs. 1(2), **10(2)**, 15(7)

#### Commencement Information

- I1** S. 71 not in force at Royal Assent see s. 83(2); s. 71 in force for certain purposes at 25.9.2000 and 2.10.2000 by [S.I. 2000/2543](#), arts. 2, 3; s. 71 in force for certain other purposes at 13.8.2001 by [S.I. 2001/2727](#), art. 2; s. 71 in force for further certain purposes at 1.10.2007 by [S.I. 2007/2196](#), art. 2(h)

#### Marginal Citations

- M1** 1994 c. 13.
- M2** 1997 c. 50.

## 72 Effect of codes of practice.

- (1) A person exercising or performing any power or duty in relation to which provision may be made by a code of practice under section 71 shall, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice for the time being in force under that section.
- (2) A failure on the part of any person to comply with any provision of a code of practice for the time being in force under section 71 shall not of itself render him liable to any criminal or civil proceedings.
- (3) A code of practice in force at any time under section 71 shall be admissible in evidence in any criminal or civil proceedings.
- (4) If any provision of a code of practice issued or revised under section 71 appears to—
  - (a) the court or tribunal conducting any civil or criminal proceedings,
  - (b) the Tribunal,
  - <sup>[F8]</sup>(ba) the Investigatory Powers Commissioner for Northern Ireland carrying out functions under this Act, or]
  - <sup>[F8]</sup>(bb) the Investigatory Powers Commissioner or any other Judicial Commissioner carrying out functions under this Act, the Investigatory Powers Act 2016 or the Police Act 1997,]

to be relevant to any question arising in the proceedings, or in connection with the exercise of that jurisdiction or the carrying out of those functions, in relation to a time when it was in force, that provision of the code shall be taken into account in determining that question.

<sup>F9</sup>(5) .....

#### Textual Amendments

- F8** S. 72(4)(ba)(bb) substituted (1.9.2017) for s. 72(4)(c)-(e) by [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), **Sch. 10 para. 82(2)** (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), reg. 2(j)
- F9** S. 72(5) omitted (1.9.2017) by virtue of [Investigatory Powers Act 2016 \(c. 25\)](#), s. 272(1), **Sch. 10 para. 82(3)** (with [Sch. 9 paras. 7, 8, 10](#)); [S.I. 2017/859](#), reg. 2(j)

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

- C3** S. 72(4) modified (31.7.2014) by [The Data Retention Regulations 2014 \(S.I. 2014/2042\)](#), regs. 1(2), [10\(4\)](#), 15(7)

**Commencement Information**

- I2** S. 72 not in force at Royal Assent see s. 83(2); s. 72 in force for certain purposes at 25.9.2000 and s. 72 in force at 2.10.2000 for certain other purposes by [S.I. 2000/2543](#), arts. 2, 3; s. 72 in force for certain other purposes at 13.8.2001 by [S.I. 2001/2727](#), art. 2; s. 72 in force for further certain purposes at 1.10.2007 by [S.I. 2007/2196](#), art. 2(h)

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