



# Regulation of Investigatory Powers Act 2000

## 2000 CHAPTER 23

### PART V

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Miscellaneous*

#### **73 Conduct in relation to wireless telegraphy.**

- (1) Section 5 of the <sup>M1</sup>Wireless Telegraphy Act 1949 (misleading messages and interception and disclosure of wireless telegraphy messages) shall become subsection (1) of that section.
- (2) In paragraph (b) of that subsection—
  - (a) for the words from “under the authority of” to “servant of the Crown,” there shall be substituted “ under the authority of a designated person ”; and
  - (b) in sub-paragraph (i), for the words from “which neither” to the end of the sub-paragraph there shall be substituted “ of which neither the person using the apparatus nor a person on whose behalf he is acting is an intended recipient, ”.
- (3) In that section, after that subsection there shall be inserted—
  - “(2) The conduct in relation to which a designated person may give a separate authority for the purposes of this section shall not, except where he believes the conduct to be necessary on grounds falling within subsection (5) of this section, include—
    - (a) any conduct which, if engaged in without lawful authority, constitutes an offence under section 1(1) or (2) of the Regulation of Investigatory Powers Act 2000;
    - (b) any conduct which, if engaged in without lawful authority, is actionable under section 1(3) of that Act;

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- (c) any conduct which is capable of being authorised by an authorisation or notice granted by any person under Chapter II of Part I of that Act (communications data);
  - (d) any conduct which is capable of being authorised by an authorisation granted by any person under Part II of that Act (surveillance etc.).
- (3) A designated person shall not exercise his power to give a separate authority for the purposes of this section except where he believes—
- (a) that the giving of his authority is necessary on grounds falling within subsection (4) or (5) of this section; and
  - (b) that the conduct authorised by him is proportionate to what is sought to be achieved by that conduct.
- (4) A separate authority for the purposes of this section is necessary on grounds falling within this subsection if it is necessary—
- (a) in the interests of national security;
  - (b) for the purpose of preventing or detecting crime (within the meaning of the Regulation of Investigatory Powers Act 2000) or of preventing disorder;
  - (c) in the interests of the economic well-being of the United Kingdom;
  - (d) in the interests of public safety;
  - (e) for the purpose of protecting public health;
  - (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
  - (g) for any purpose (not falling within paragraphs (a) to (f)) which is specified for the purposes of this subsection by regulations made by the Secretary of State.
- (5) A separate authority for the purposes of this section is necessary on grounds falling within this subsection if it is not necessary on grounds falling within subsection (4)(a) or (c) to (g) but is necessary for purposes connected with—
- (a) the issue of licences under this Act;
  - (b) the prevention or detection of anything which constitutes interference with wireless telegraphy; or
  - (c) the enforcement of any enactment contained in this Act or of any enactment not so contained that relates to such interference.
- (6) The matters to be taken into account in considering whether the requirements of subsection (3) of this section are satisfied in the case of the giving of any separate authority for the purposes of this section shall include whether what it is thought necessary to achieve by the authorised conduct could reasonably be achieved by other means.
- (7) A separate authority for the purposes of this section must be in writing and under the hand of—
- (a) the Secretary of State;
  - (b) one of the Commissioners of Customs and Excise; or
  - (c) a person not falling within paragraph (a) or (b) who is designated for the purposes of this subsection by regulations made by the Secretary of State.

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- (8) A separate authority for the purposes of this section may be general or specific and may be given—
- (a) to such person or persons, or description of persons,
  - (b) for such period, and
  - (c) subject to such restrictions and limitations,
- as the designated person thinks fit.
- (9) No regulations shall be made under subsection (4)(g) unless a draft of them has first been laid before Parliament and approved by a resolution of each House.
- (10) For the purposes of this section the question whether conduct is capable of being authorised under Chapter II of Part I of the Regulation of Investigatory Powers Act 2000 or under Part II of that Act shall be determined without reference—
- (a) to whether the person whose conduct it is is a person on whom any power or duty is or may be conferred or imposed by or under Chapter II of Part I or Part II of that Act; or
  - (b) to whether there are grounds for believing that the requirements for the grant of an authorisation or the giving of a notice under Chapter II of Part I or Part II of that Act are satisfied.
- (11) References in this section to a separate authority for the purposes of this section are references to any authority for the purposes of this section given otherwise than by way of the issue or renewal of a warrant, authorisation or notice under Part I or II of the Regulation of Investigatory Powers Act 2000.
- (12) In this section “designated person” means—
- (a) the Secretary of State;
  - (b) the Commissioners of Customs and Excise; or
  - (c) any other person designated for the purposes of this section by regulations made by the Secretary of State.”
- (4) In section 16(2) of that Act (regulations and orders), after “the said powers” there shall be inserted “, other than one containing regulations a draft of which has been approved for the purposes of section 5(9), ”.

#### Marginal Citations

M1 1949 c. 54.

## 74 Warrants under the Intelligence Services Act 1994.

- (1) In subsection (2) of section 5 of the <sup>M2</sup>Intelligence Services Act 1994 (the circumstances in which the Secretary of State may issue a warrant authorising interference with property or wireless telegraphy)—
- (a) in paragraph (a), for “on the ground that it is likely to be of substantial value in” there shall be substituted “ for the purpose of ”; and
  - (b) for paragraph (b) there shall be substituted—
    - “(b) is satisfied that the taking of the action is proportionate to what the action seeks to achieve;”.

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(2) After that subsection, there shall be inserted—

“(2A) The matters to be taken into account in considering whether the requirements of subsection (2)(a) and (b) are satisfied in the case of any warrant shall include whether what it is thought necessary to achieve by the conduct authorised by the warrant could reasonably be achieved by other means.”

(3) In each of sections 6(1)(b) and 7(5)(b) of that Act (warrants issued under the hand of a senior official of the Secretary of State’s department), the words “of his department” shall be omitted.

(4) In section 11 of that Act (interpretation), for paragraph (1)(d) there shall be substituted—

“(d) “senior official” has the same meaning as in the Regulation of Investigatory Powers Act 2000;”.

#### Marginal Citations

M2 1994 c. 13.

### 75 Authorisations under Part III of the Police Act 1997.

(1) Section 93 of the <sup>M2</sup>Police Act 1997 (authorisations to interfere with property etc.) shall be amended as follows.

(2) In subsection (1) (the action that the authorising officer may authorise), for “or” at the end of paragraph (a) there shall be substituted—

“(ab) the taking of such action falling within subsection (1A), in respect of property outside the relevant area, as he may specify, or”.

(3) After that subsection there shall be inserted—

“(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 customs officer with the omission of—

- (a) the words “in the relevant area”, in each place where they occur; and
- (b) paragraph (ab).”

(4) In subsection (2) (the grounds on which action may be authorised)—

(a) in paragraph (a), for the words from “on the ground” to “detection of” there shall be substituted “for the purpose of preventing or detecting”; and

(b) for paragraph (b) there shall be substituted—

“(b) that the taking of the action is proportionate to what the action seeks to achieve.”

(5) After subsection (2) there shall be inserted—

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- “(2A) Subsection (2) applies where the authorising officer is the Chief Constable or the Deputy Chief Constable of the Royal Ulster Constabulary as if the reference in subsection (2)(a) to preventing or detecting serious crime included a reference to the interests of national security.
- (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.”
- (6) In subsection (5) (the meaning of authorising officer)—
- (a) after paragraph (e) there shall be inserted—
- “(ea) the Chief Constable of the Ministry of Defence Police;
  - (eb) the Provost Marshal of the Royal Navy Regulating Branch;
  - (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 British Transport Police;”;
- (b) <sup>F1</sup>.....
- (c) in paragraph (h), for the word “the”, in the first place where it occurs, there shall be substituted “ any ”.
- (7) In subsection (6) (the meaning of relevant area), after paragraph (c) there shall be inserted—
- “(ca) in relation to a person within paragraph (ea), means any place where, under section 2 of the <sup>M4</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;”.
- (8) After that subsection there shall be inserted—
- “(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 subject to service discipline; or
  - (b) the action is taken in relation to the use of wireless telegraphy by such a person.
- (6B) For the purposes of this section a person is subject to service discipline—
- (a) in relation to the Royal Navy Regulating Branch, if he is subject to the <sup>M5</sup>Naval Discipline Act 1957 or is a civilian to whom Parts I and II of that Act for the time being apply by virtue of section 118 of that Act ;
  - (b) in relation to the Royal Military Police, if he is subject to military law or is a civilian to whom Part II of the <sup>M6</sup>Army Act 1955 for the time being applies by virtue of section 209 of that Act; and
  - (c) in relation to the Royal Air Force Police, if he is subject to air-force law or is a civilian to whom Part II of the <sup>M7</sup>Air Force Act 1955 for the time being applies by virtue of section 209 of that Act.”

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#### Textual Amendments

**F1** S. 75(6)(b) repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 59, 174, 178, Sch. 4 para. 153, [Sch. 17](#); [S.I. 2006/378](#), [art. 4\(1\)](#), Sch. paras. 10, 13(hh) (subject to [art. 4\(2\)-\(7\)](#))

#### Marginal Citations

**M3** 1997 c. 50.

**M4** 1987 c. 4.

**M5** 1957 c. 53.

**M6** 1955 c. 18.

**M7** 1955 c. 19.

## 76 Surveillance etc. operations beginning in Scotland.

- (1) Subject to subsection (2), where—
- (a) an authorisation under the relevant Scottish legislation has the effect of authorising the carrying out in Scotland of the conduct described in the authorisation,
  - (b) the conduct so described is or includes conduct to which Part II of this Act applies, and
  - (c) circumstances arise by virtue of which some or all of the conduct so described can for the time being be carried out only outwith Scotland,
- section 27 of this Act shall have effect for the purpose of making lawful the carrying out outwith Scotland of the conduct so described as if the authorisation, so far as is it relates to conduct to which that Part applies, were an authorisation duly granted under that Part.
- (2) Where any such circumstances as are mentioned in paragraph (c) of subsection (1) so arise as to give effect outwith Scotland to any authorisation granted under the relevant Scottish legislation, that authorisation shall not authorise any conduct outwith Scotland at any time after the end of the period of three weeks beginning with the time when the circumstances arose.
- (3) Subsection (2) is without prejudice to the operation of subsection (1) in relation to any authorisation on the second or any subsequent occasion on which any such circumstances as are mentioned in subsection (1)(c) arise while the authorisation remains in force.
- (4) In this section “the relevant Scottish legislation” means an enactment contained in or made under an Act of the Scottish Parliament which makes provision, corresponding to that made by Part II, for the authorisation of conduct to which that Part applies.

### [<sup>F2</sup>76A Foreign surveillance operations

- (1) This section applies where—
- (a) a foreign police or customs officer is carrying out relevant surveillance outside the United Kingdom which is lawful under the law of the country or territory in which it is being carried out;
  - (b) circumstances arise by virtue of which the surveillance can for the time being be carried out only in the United Kingdom; and

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- (c) it is not reasonably practicable in those circumstances for a United Kingdom officer to carry out the surveillance in the United Kingdom in accordance with an authorisation under Part 2 or the Regulation of Investigatory Powers (Scotland) Act 2000.
- (2) “Relevant surveillance” means surveillance which—
- (a) is carried out in relation to a person who is suspected of having committed a relevant crime; and
- (b) is, for the purposes of Part 2, directed surveillance or intrusive surveillance.
- (3) “Relevant crime” means crime which—
- (a) falls within Article 40(7) of the Schengen Convention; or
- (b) is crime for the purposes of any other international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State with the consent of the Scottish Ministers.
- (4) Relevant surveillance carried out by the foreign police or customs officer in the United Kingdom during the permitted period is to be lawful for all purposes if—
- (a) the condition mentioned in subsection (6) is satisfied;
- (b) the officer carries out the surveillance only in places to which members of the public have or are permitted to have access, whether on payment or otherwise; and
- (c) conditions specified in any order made by the Secretary of State with the consent of the Scottish Ministers are satisfied in relation to its carrying out;
- but no surveillance is lawful by virtue of this subsection if the officer subsequently seeks to stop and question the person in the United Kingdom in relation to the relevant crime.
- (5) The officer is not to be subject to any civil liability in respect of any conduct of his which is incidental to any surveillance that is lawful by virtue of subsection (4).
- (6) The condition in this subsection is satisfied if, immediately after the officer enters the United Kingdom—
- (a) he notifies a person designated by the Director General of the [F<sup>3</sup>Serious Organised Crime Agency] of that fact; and
- (b) (if the officer has not done so before) he requests an application to be made for an authorisation under Part 2, or the Regulation of Investigatory Powers (Scotland) Act 2000, for the carrying out of the surveillance.
- (7) “The permitted period” means the period of five hours beginning with the time when the officer enters the United Kingdom.
- (8) But a person designated by an order made by the Secretary of State may notify the officer that the surveillance is to cease being lawful by virtue of subsection (4) when he gives the notification.
- (9) The Secretary of State is not to make an order under subsection (4) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
- (10) In this section references to a foreign police or customs officer are to a police or customs officer who, in relation to a country or territory other than the United Kingdom, is an officer for the purposes of—
- (a) Article 40 of the Schengen Convention; or

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- (b) any other international agreement to which the United Kingdom is a party and which is specified for the purposes of this section in an order made by the Secretary of State with the consent of the Scottish Ministers.

(11) In this section—

“the Schengen Convention” means the Convention implementing the Schengen Agreement of 14th June 1985;

“United Kingdom officer” means—

- (a) a member of a police force;
- (b) a member of the [<sup>F4</sup>staff of the Serious Organised Crime Agency] ;
- (c) a member of <sup>F5</sup>. . . of the Scottish Crime Squad (within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000);
- (d) a customs officer.]

#### Textual Amendments

- F2** S. 76A inserted (26.4.2004) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), **ss. 83, 94**; S.I. 2004/786, **art. 3(1)(2)**
- F3** Words in s. 76A(6)(a) substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 59, 178, Sch. 4 para. 154(2)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F4** S. 76A(11): words in the definition of "United Kingdom officer" substituted (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 59, 178, Sch. 4 para. 154(3)(a)**; S.I. 2006/378, **art. 4(1)**, Sch. para. 10 (subject to art. 4(2)-(7))
- F5** S. 76A(11): words in the definition of "United Kingdom officer" repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 59, 174, 178, Sch. 4 para. 154(3), Sch. 17**; S.I. 2006/378, **art. 4(1)**, Sch. paras. 10, 13(hh) (subject to art. 4(2)-(7))



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