
EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order brings into force three revised codes of practice issued under section 71 of the Regulation of Investigatory Powers Act 2000 (c. 23) (“the Act”), which will replace the current version of those Codes issued under the Act. The codes of practice come into force on the day on which this Order comes into force.

The code of practice entitled “Covert Surveillance and Property Interference” is about the carrying out of covert surveillance under Part 2 of the Act and interference with property or wireless telegraphy under section 5 of the Intelligence Services Act 1994 (c. 13) and Part 3 of the Police Act 1997 (c. 50). The code of practice entitled “Covert Human Intelligence Sources” is about the authorisation of the use or conduct of covert human intelligence sources under Part 2 of the Act. The code of practice entitled “Investigation of Protected Electronic Information” is about the investigation of protected electronic information under Part 3 of the Act.

The codes of practice will be published by the Stationery Office and copies may be obtained from the Stationery Office bookshops or online shop. The codes of practice will also be available on the Regulation of Investigatory Powers Act 2000 codes of practice pages on the gov.uk website.

Article 3 of the Order makes three amendments to Parts 1 and 2 of Schedule 1 to the Act. The Schedule lists the public authorities able to authorise surveillance activity and the use of covert human intelligence sources under Part 2 of the Act. The amendments remove the ability to authorise under Part 2 of the Act from two public authorities and grant the ability to authorise to the Marine Management Organisation.

Articles 4 and 5 of the Order make various amendments to Parts 1 and 2 of the Schedule to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (S.I. 2010/521). The Schedule prescribes the offices in public authorities able to authorise surveillance activity and use of covert human intelligence sources and the grounds on which such authorisations may be made. The amendments to the Schedule reflect changes within public authorities to those responsible for authorisations under Part 2 of the Act.

Article 6 amends paragraph 27 of Schedule 8 to the Investigatory Powers Act 2016 (c. 25), which makes provision for the duration of combined warrants issued under that Schedule. The amendment provides that in the case of a combined warrant containing an authorisation for the carrying out of intrusive surveillance and which is issued on the application of any of the intelligence services section 44(3) of the Act does not apply. Section 44(3) would otherwise provide that such a warrant issued under the hand of an official would cease to have effect at the end of the second working day following the issue of the warrant. The amendment similarly provides that in the case of a combined warrant including a warrant under section 5 of the Intelligence Services Act 1994 (c. 13), section 6(2) of that Act is modified such that the warrant would cease to have effect at the end of the period of six months beginning with the day on which it was issued. Section 6(2) would otherwise provide that such a warrant issued under the hand of a senior official would cease to have effect at the end of the fifth working day following the issue of the warrant.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.