

# Investigatory Powers Bill

## Keeling Schedule

This schedule has been prepared by the Home Office. It is intended for illustrative purposes only, to assist the reader of the Bill to understand the changes to other primary legislation which would be made by the Bill.

The Schedule shows the changes made by the Bill as committed to a Committee of the Whole House by the House of Lords.

This Schedule shows only the most significant changes to primary legislation that would be made by the Bill. It includes changed to:

The Crime and Courts Act 2013	3
The Wireless Telegraphy Act 2006	5
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## Notes

An ellipsis .... indicates that a provision has been previously repealed

When text would be repealed or omitted - text is ~~struck through~~ and presented in red text

When new text would be inserted - Text is [surrounded with square brackets] and inserted in red text

When existing text would be substituted - Text to be replaced is ~~struck through~~ and presented in red text. The text replacing it is presented straight afterwards [enclosed with square brackets] and also in red text

Following each heading, text *in italics* explains the main provisions of the Bill that amend that Part of the Act in question. Such notes are a guide only and are not intended to be comprehensive.

# Crime and Courts Act 2013

*Paragraph 6A of Schedule 1 and paragraph 1(b) of Schedule 7 to the Crime and Courts Act is amended by paragraphs 63 and 29 of Schedule 10 to the Bill. Only these paragraphs would be amended by the Bill and accordingly only those paragraphs are shown below.*

## SCHEDULE 1 – THE NCA & NCA OFFICERS

### 6A Investigatory Activity in Northern Ireland

(1) An NCA officer may only carry out relevant investigatory activity in Northern Ireland if one or both of the following conditions is met--

- (a) the NCA officer carries out the relevant investigatory activity with the agreement of the Chief Constable of the Police Service of Northern Ireland;
- (b) the NCA officer carries out the relevant investigatory activity in relation to the conduct of a police officer.

(2) The Chief Constable may arrange for a member of the Police Service of Northern Ireland at the rank of Superintendent or above to give agreement for the purposes of sub-paragraph (1)(a) (whether in all cases or in cases specified in the arrangements).

(3) In this paragraph "relevant investigatory activity" means any activity which is authorised by ~~an authorisation granted under any of the following provisions—~~

~~[(za) a targeted equipment interference warrant under Part 5 of the Investigatory Powers Act 2016;]~~

~~(a) in the [an authorisation granted under any of the following provisions of the] Regulation of Investigatory Powers Act 2000--~~

- ~~(i) section 28 (directed surveillance);~~
- ~~(ii) section 29 (conduct or use of a covert human intelligence source);~~
- ~~(iii) section 32 (intrusive surveillance);~~

~~(b) [an authorisation granted under] section 93 of the Police Act 1997 (authorisation in respect of property).~~

[(4) For the purpose of sub-paragraph (1), a relevant investigatory activity falling within sub-paragraph (3)(za) is to be regarded as carried out in Northern Ireland if (and to the extent that)—

(a) the equipment that is being interfered with under the warrant is in Northern Ireland, and

(b) at the time of the carrying out of the activity, the NCA officer knows that the equipment is in Northern Ireland.

(5) Sub-paragraph (6) applies where—

(a) in the carrying out by an NCA officer of a relevant investigatory activity falling within sub-paragraph (3)(za), equipment in Northern Ireland is interfered with under the warrant,

(b) at the time the interference begins, the NCA officer does not know that the equipment is in Northern Ireland, and

(c) at any time while the interference is continuing, the NCA officer becomes aware that the equipment is in Northern Ireland.

(6) The NCA officer is not to be regarded as in breach of subparagraph (1) if the interference continues after the NCA officer becomes aware that the equipment is in Northern Ireland, provided that the officer informs the Chief Constable of the Police Service of Northern Ireland about the interference as soon as reasonably practicable.”]

## **SCHEDULE 7 – INFORMATION: RESTRICTIONS ON DISCLOSURE**

### **1**

This Part of this Act does not authorise or require—

(a) a disclosure, in contravention of any provisions of the Data Protection Act 1998, of personal data which are not exempt from those provisions, or

(b) a disclosure which is prohibited by ~~Part 1 of the Regulation of Investigatory Powers Act 2000~~ [any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016].

## Wireless Telegraphy Act 2006

*Sections 48 and 49 of the Wireless Telegraphy Act 2006 would be amended by clause 221 of the Bill. Only those sections are shown below. Minor and consequential amendments would be made to sections 50, 119 and 121 of the Wireless Telegraphy Act 2006 by clause 221 of the Bill.*

### 48 Interception and disclosure of messages

(1) A person commits an offence if, ~~otherwise than under the authority of a designated person [without lawful authority]--~~

(a) he uses wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of a message (whether sent by means of wireless telegraphy or not) of which neither he nor a person on whose behalf he is acting is an intended recipient, or

(b) he discloses information as to the contents, sender or addressee of such a message.

(2) A person commits an offence under this section consisting in the disclosure of information only if the information disclosed by him is information that would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or by another person.

(3) A person does not commit an offence under this section consisting in the disclosure of information if he discloses the information in the course of legal proceedings or for the purpose of a report of legal proceedings.

~~[(3A) A person does not commit an offence under this section consisting in any conduct if the conduct –~~

~~(a) constitutes an offence under section 2 of the Investigatory Powers Act 2016 (offence of unlawful interception), or~~

~~(b) would do so in the absence of any lawful authority (within the meaning of section 5 of that Act).]~~

(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

~~(5) "Designated person" means--~~

~~(a) the Secretary of State;~~

~~(b) the Commissioners for Her Majesty's Revenue and Customs; or~~

~~(c) any other person designated for the purposes of this section by regulations made by the Secretary of State.~~

## **49 Interception authorities**

~~(1) — The conduct in relation to which a designated person may give an interception authority is not to include conduct falling within subsection (2), except where he believes that the conduct is necessary on grounds falling within subsection (5).~~

~~(2) — Conduct falls within this subsection if it is —~~

~~(a) — conduct that, if engaged in without lawful authority, constitutes an offence under section 1(1) or (2) of the Regulation of Investigatory Powers Act 2000 (c 23);~~

~~(b) — conduct that, if engaged in without lawful authority, is actionable under section 1(3) of that Act;~~

~~(c) — conduct that is capable of being authorised by an authorisation or notice granted under Chapter 2 of Part 1 of that Act (communications data); or~~

~~(d) — conduct that is capable of being authorised by an authorisation granted under Part 2 of that Act (surveillance etc).~~

~~(3) — A designated person may not exercise his power to give an interception authority except where he believes —~~

~~(a) — that the giving of his authority is necessary on grounds falling within subsection (4) or (5); and~~

~~(b) — that the conduct authorised by him is proportionate to what is sought to be achieved by that conduct.~~

~~(4) — An interception authority 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 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 a 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)) that is specified for the purposes of this subsection by regulations made by the Secretary of State.~~

~~(5) — An interception authority 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 grant of wireless telegraphy licences;~~
- ~~(b) — the prevention or detection of anything that constitutes interference with wireless telegraphy; or~~
- ~~(c) — the enforcement of —
  - ~~(i) — any provision of this Part (other than Chapter 2 and sections 27 to 31) or Part 3, or~~
  - ~~(ii) — any enactment not falling within sub-paragraph (i) that relates to interference with wireless telegraphy.~~~~

~~(6) — The matters to be taken into account in considering whether the requirements of subsection (3) are satisfied in the case of the giving of an interception authority include whether what it is thought necessary to achieve by the authorised conduct could reasonably be achieved by other means.~~

~~(7) — An interception authority must be in writing and under the hand of —~~

- ~~(a) — the Secretary of State;~~
- ~~(b) — one of the Commissioners for Her Majesty's Revenue and Customs; 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.~~

~~(8) — An interception authority 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 may 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 a person's conduct is capable of being authorised under Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000 (c 23) or under Part 2 of that Act is to be determined without reference —~~

- ~~(a) — to whether the person is someone upon whom a power or duty is or may be conferred or imposed by or under that Chapter or that Part; 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 that Chapter or that Part are satisfied.~~

~~(11) — References in this section to an interception authority are references to an authority for the purposes of section 48 given otherwise than by way of the issue or renewal of a warrant, authorisation or notice under Part 1 or 2 of the Regulation of Investigatory Powers Act 2000.~~

~~(12) — In this section —~~

~~“crime” has the meaning given by section 81(2)(a) of the Regulation of Investigatory Powers Act 2000 (c 23);~~

~~“designated person” has the same meaning as in section 48.~~

## Police Reform Act 2002

*Paragraphs 19ZA of Schedule 3 to the Police Reform Act 2002 would be amended by paragraphs 13, 46 and 57 of Schedule 10 to the Bill. Only those paragraphs of the Police Reform Act 2002 would be amended by the Bill and accordingly only those paragraphs are shown below.*

### **19ZA Investigations by the Commission: power to serve information notice**

(1) The Commission may serve upon any person an information notice requiring the person to provide it with information that it reasonably requires for the purposes of an investigation in accordance with paragraph 19.

(2) But an information notice must not require a person--

(a) to provide information that might incriminate the person;

(b) to provide an item subject to legal privilege within the meaning of the Police and Criminal Evidence Act 1984 (see section 10 of that Act);

(c) to make a disclosure that would be prohibited by ~~Part 1 of the Regulation of Investigatory Powers Act 2000~~ [any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016];

(d) to provide information that was provided to the person by, or by an agency of, the government of a country or territory outside the United Kingdom where that government does not consent to the disclosure of the information.

(3) Neither must an information notice require a postal or telecommunications operator ~~(within the meaning of Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000)~~ to provide communications data ~~(within the meaning of that Chapter)~~.

[(3A) in sub-paragraph (3) “communications data”, “postal operator” and “telecommunications operator” have the same meanings as in the Investigatory Powers Act 2016 (see sections 223 and 224 of that Act).]

(4) An information notice must--

(a) specify or describe the information that is required by the Commission and the form in which it must be provided;

(b) specify the period within which the information must be provided;

(c) give details of the right of appeal against the information notice under paragraph 19ZC.

(5) The period specified under sub-paragraph (4)(b) must not end before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be provided pending the determination or withdrawal of the appeal.

(6) The Commission may cancel an information notice by written notice to the person on whom it was served.

# Regulation of Investigatory Powers Act 2000

*Amended by clauses 200, 206, 208 and 209, and paragraphs 3 to 6, 40 to 45, 49 to 56 and 68 to 75 of Schedule 10.*

## **Part 1 – COMMUNICATIONS**

*Repealed by paragraphs 41 and 50 of Schedule 10 to the Bill and replaced, primarily, by Part 2 of the Bill (Lawful interception of Communications), Part 3 of the Bill (Authorisations for obtaining communications data) and Chapter 1 of Part 6 of the Bill (Bulk interception warrants).*

## **Part 2 - SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES**

*Amended by clause 200 of the Bill (Functions under other Parts and other enactments). Minor and consequential amendments are made by Schedule 10 to the Bill.*

### **26 Conduct to which Part II applies**

- (1) This Part applies to the following conduct--
  - (a) directed surveillance;
  - (b) intrusive surveillance; and
  - (c) the conduct and use of covert human intelligence sources.
- (2) Subject to subsection (6), surveillance is directed for the purposes of this Part if it is covert but not intrusive and is undertaken--
  - (a) for the purposes of a specific investigation or a specific operation;
  - (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
  - (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Part to be sought for the carrying out of the surveillance.
- (3) Subject to subsections (4) to (6), surveillance is intrusive for the purposes of this Part if, and only if, it is covert surveillance that--

- (a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
- (b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

(4) For the purposes of this Part surveillance is not intrusive to the extent that--

- (a) it is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle; or
- (b) it is surveillance consisting in any such interception of a communication as falls within section 48(4).

(5) For the purposes of this Part surveillance which--

- (a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle, but
- (b) is carried out without that device being present on the premises or in the vehicle,

is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

(6) For the purposes of this Part surveillance which--

- (a) is carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use in any residential or other premises of a television receiver (within the meaning of Part 4 of the Communications Act 2003), and
- (b) is carried out from outside those premises exclusively for that purpose,

is neither directed nor intrusive.

(7) In this Part--

- (a) references to the conduct of a covert human intelligence source are references to any conduct of such a source which falls within any of paragraphs (a) to (c) of subsection (8), or is incidental to anything falling within any of those paragraphs; and
- (b) references to the use of a covert human intelligence source are references to inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source.

(8) For the purposes of this Part a person is a covert human intelligence source if--

- (a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);
- (b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or

(c) he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

(9) For the purposes of this section--

(a) surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place;

(b) a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose; and

(c) a relationship is used covertly, and information obtained as mentioned in subsection (8)(c) is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

(10) In this section "private information", in relation to a person, includes any information relating to his private or family life.

(11) References in this section, in relation to a vehicle, to the presence of a surveillance device in the vehicle include references to its being located on or under the vehicle and also include references to its being attached to it.

## **27 Lawful surveillance etc**

(1) Conduct to which this Part applies shall be lawful for all purposes if--

(a) an authorisation under this Part confers an entitlement to engage in that conduct on the person whose conduct it is; and

(b) his conduct is in accordance with the authorisation.

(2) A person shall not be subject to any civil liability in respect of any conduct of his which--

(a) is incidental to any conduct that is lawful by virtue of subsection (1); and

(b) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question.

(3) The conduct that may be authorised under this Part includes conduct outside the United Kingdom.

(4) In this section "relevant enactment" means--

(a) an enactment contained in this Act [\[or the Investigatory Powers Act 2016\]](#);

- (b) section 5 of the Intelligence Services Act 1994 (warrants for the intelligence services); or
- (c) an enactment contained in Part III of the Police Act 1997 (powers of the police and of officers of Revenue and Customs).

## **28 Authorisation of directed surveillance**

(1) Subject to the following provisions of this Part, the persons designated for the purposes of this section shall each have power to grant authorisations for the carrying out of directed surveillance.

(2) A person shall not grant an authorisation for the carrying out of directed surveillance unless he believes--

- (a) that the authorisation is necessary on grounds falling within subsection (3); and
- (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(3) An authorisation 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 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 an order made by the Secretary of State.

(4) The conduct that is authorised by an authorisation for the carrying out of directed surveillance is any conduct that--

- (a) consists in the carrying out of directed surveillance of any such description as is specified in the authorisation; and
- (b) is carried out in the circumstances described in the authorisation and for the purposes of the investigation or operation specified or described in the authorisation.

(5) The Secretary of State shall not make an order under subsection (3)(g) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

## **29 Authorisation of covert human intelligence sources**

(1) Subject to the following provisions of this Part, the persons designated for the purposes of this section shall each have power to grant authorisations for the conduct or the use of a covert human intelligence source.

(2) A person shall not grant an authorisation for the conduct or the use of a covert human intelligence source unless he believes--

(a) that the authorisation is necessary on grounds falling within subsection (3);

(b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use; and

(c) that arrangements exist for the source's case that satisfy--

(i) the requirements of subsection (4A), in the case of a source of a relevant collaborative unit;

(ii) . . .

(iii) the requirements of subsection (5), in the case of any other source;

and that satisfy such other requirements as may be imposed by order made by the Secretary of State.

(2A) For the purposes of subsection (2)--

(a) a relevant collaborative unit is a unit consisting of two or more police forces whose chief officers of police have made an agreement under section 23(1) of the Police Act 1996 which relates to the discharge by persons holding offices, ranks or positions with any of the forces of functions in connection with the conduct or use of the source; . . .

(b) . . . .

(3) An authorisation 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 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 an order made by the Secretary of State.

(4) The conduct that is authorised by an authorisation for the conduct or the use of a covert human intelligence source is any conduct that--

(a) is comprised in any such activities involving conduct of a covert human intelligence source, or the use of a covert human intelligence source, as are specified or described in the authorisation;

(b) consists in conduct by or in relation to the person who is so specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and

(c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

(4A) For the purposes of this Part there are arrangements for the source's case that satisfy the requirements of this subsection if such arrangements are in force as are necessary for ensuring--

(a) that there will at all times be a qualifying person who will have day-to-day responsibility for dealing with the source, and for the source's security and welfare;

(b) that there will at all times be another qualifying person who will have general oversight of the use made of the source;

(c) that there will at all times be a qualifying person who will have responsibility for maintaining a record of the use made of the source;

(d) that the records relating to the source that are maintained by virtue of paragraph (c) will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and

(e) that records maintained by virtue of paragraph (c) that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

(4B) . . .

(5) For the purposes of this Part there are arrangements for the source's case that satisfy the requirements of this subsection if such arrangements are in force as are necessary for ensuring--

(a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare;

(b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;

(c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source;

(d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and

(e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

(6) The Secretary of State shall not make an order under subsection (3)(g) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(7) The Secretary of State may by order--

(a) prohibit the authorisation under this section of any such conduct or uses of covert human intelligence sources as may be described in the order; and

(b) impose requirements, in addition to those provided for by subsection (2), that must be satisfied before an authorisation is granted under this section for any such conduct or uses of covert human intelligence sources as may be so described.

(7A) For the purposes of subsection (4A) a person is a qualifying person if--

(a) the person holds an office, rank or position with a police force whose chief officer of police is a party to the agreement mentioned in subsection (2A)(a); and

(b) persons holding offices, ranks or positions with that force are permitted by the terms of the agreement to have the responsibility mentioned in paragraph (a) or (c) of subsection (4A) or the general oversight mentioned in paragraph (b) of that subsection (as the case may require).

(7B) . . .

(8) In this section "relevant investigating authority", in relation to an authorisation for the conduct or the use of an individual as a covert human intelligence source, means (subject to subsection (9)) the public authority for whose benefit the activities of that individual as such a source are to take place.

(9) In the case of any authorisation for the conduct or the use of a covert human intelligence source whose activities are to be for the benefit of more than one public authority, the references in subsection (5) to the relevant investigating authority are references to one of them (whether or not the same one in the case of each reference).

(10) For the purposes of this section--

(a) references to a police force are to the following--

- (i) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
  - (ii) the metropolitan police force; and
  - (iii) the City of London police force; . . .
- (b) . . . .

**30 Persons entitled to grant authorisations under ss 28 and 29**

(1) Subject to subsection (3), the persons designated for the purposes of sections 28 and 29 are the individuals holding such offices, ranks or positions with relevant public authorities as are prescribed for the purposes of this subsection by an order under this section.

(2) For the purposes of the grant of an authorisation that combines--

- (a) an authorisation under section 28 or 29, and
- (b) an authorisation by the Secretary of State for the carrying out of intrusive surveillance,

the Secretary of State himself shall be a person designated for the purposes of that section.

(3) An order under this section may impose restrictions--

- (a) on the authorisations under sections 28 and 29 that may be granted by any individual holding an office, rank or position with a specified public authority; and
- (b) on the circumstances in which, or the purposes for which, such authorisations may be granted by any such individual.

(4) A public authority is a relevant public authority for the purposes of this section--

- (a) in relation to section 28 if it is specified in Part I or II of Schedule 1; and
- (b) in relation to section 29 if it is specified in Part I of that Schedule.

(5) An order under this section may amend Schedule 1 by--

- (a) adding a public authority to Part I or II of that Schedule;
- (b) removing a public authority from that Schedule;
- (c) moving a public authority from one Part of that Schedule to the other;
- (d) making any change consequential on any change in the name of a public authority specified in that Schedule.

(6) Without prejudice to section 31, the power to make an order under this section shall be exercisable by the Secretary of State.

(7) The Secretary of State shall not make an order under subsection (5) containing any provision for--

- (a) adding any public authority to Part I or II of that Schedule, or
- (b) moving any public authority from Part II to Part I of that Schedule,

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

### **31 Orders under s 30 for Northern Ireland**

(1) Subject to subsections (2) and (3), the power to make an order under section 30 for the purposes of the grant of authorisations for conduct in Northern Ireland shall be exercisable by the Office of the First Minister and deputy First Minister in Northern Ireland (concurrently with being exercisable by the Secretary of State).

(2) The power of the Office of the First Minister and deputy First Minister to make an order under section 30 by virtue of subsection (1) or (3) of that section shall not be exercisable in relation to any public authority other than--

- (a) the Food Standards Agency;
- (b) . . .
- (c) an authority added to Schedule 1 by an order made by that Office;
- (d) an authority added to that Schedule by an order made by the Secretary of State which it would (apart from that order) have been within the powers of that Office to add to that Schedule for the purposes mentioned in subsection (1) of this section.

(3) The power of the Office of the First Minister and deputy First Minister to make an order under section 30--

- (a) shall not include power to make any provision dealing with an excepted matter;
- (b) shall not include power, except with the consent of the Secretary of State, to make any provision dealing with a reserved matter.

(4) The power of the Office of the First Minister and deputy First Minister to make an order under section 30 shall be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

(5) A statutory rule containing an order under section 30 which makes provision by virtue of subsection (5) of that section for--

- (a) adding any public authority to Part I or II of Schedule 1, or
- (b) moving any public authority from Part II to Part I of that Schedule,

shall be subject to affirmative resolution (within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1954).

(6) A statutory rule containing an order under section 30 (other than one to which subsection (5) of this section applies) shall be subject to negative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954).

(7) An order under section 30 made by the Office of the First Minister and deputy First Minister may--

- (a) make different provision for different cases;
- (b) contain such incidental, supplemental, consequential and transitional provision as that Office thinks fit.

(8) The reference in subsection (2) to an addition to Schedule 1 being within the powers of the Office of the First Minister and deputy First Minister includes a reference to its being within the powers exercisable by that Office with the consent for the purposes of subsection (3)(b) of the Secretary of State.

(9) In this section "excepted matter" and "reserved matter" have the same meanings as in the Northern Ireland Act 1998; and, in relation to those matters, section 98(2) of that Act (meaning of "deals with") applies for the purposes of this section as it applies for the purposes of that Act.

### **32 Authorisation of intrusive surveillance**

(1) Subject to the following provisions of this Part, the Secretary of State and each of the senior authorising officers shall have power to grant authorisations for the carrying out of intrusive surveillance.

(2) Neither the Secretary of State nor any senior authorising officer shall grant an authorisation for the carrying out of intrusive surveillance unless he believes--

- (a) that the authorisation is necessary on grounds falling within subsection (3); and
- (b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(3) Subject to the following provisions of this section, an authorisation 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 serious crime; or
- (c) in the interests of the economic well-being of the United Kingdom.

(3A) In the case of an authorisation granted by the chair of the CMA, the authorisation is necessary on grounds falling within subsection (3) only if it is necessary for the purpose

of preventing or detecting an offence under section 188 of the Enterprise Act 2002 (cartel offence).

(4) 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 the information which it is thought necessary to obtain by the authorised conduct could reasonably be obtained by other means.

(5) The conduct that is authorised by an authorisation for the carrying out of intrusive surveillance is any conduct that--

(a) consists in the carrying out of intrusive surveillance of any such description as is specified in the authorisation;

(b) is carried out in relation to the residential premises specified or described in the authorisation or in relation to the private vehicle so specified or described; and

(c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

(6) For the purposes of this section the senior authorising officers are--

(a) the chief constable of every police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);

(b) the Commissioner of Police of the Metropolis and every Assistant Commissioner of Police of the Metropolis;

(c) the Commissioner of Police for the City of London;

(d) the chief constable of the Police Service of Scotland;

(e) the Chief Constable of the Police Service of Northern Ireland and the Deputy Chief Constable of the Police Service of Northern Ireland;

(f) the Chief Constable of the Ministry of Defence Police;

(g) the Provost Marshal of the Royal Navy Police;

(h) the Provost Marshal of the Royal Military Police;

(i) the Provost Marshal of the Royal Air Force Police;

(j) the Chief Constable of the British Transport Police;

(k) the Director General of the National Crime Agency and any National Crime Agency officer who is designated for the purposes of this paragraph by that Director General;

(m) an officer of Revenue and Customs who is a senior official and who is designated for the purposes of this paragraph by the Commissioners for Her Majesty's Revenue and Customs; . . .

(ma) a senior official in the department of the Secretary of State by whom functions relating to immigration are exercisable who is designated for the purposes of this paragraph by the Secretary of State; and

(n) the chair of the CMA.

### **32A Authorisations requiring judicial approval**

(1) This section applies where a relevant person has granted an authorisation under section 28 or 29.

(2) The authorisation is not to take effect until such time (if any) as the relevant judicial authority has made an order approving the grant of the authorisation.

(3) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 28 if, and only if, the relevant judicial authority is satisfied that--

(a) at the time of the grant--

(i) there were reasonable grounds for believing that the requirements of section 28(2) were satisfied in relation to the authorisation, and

(ii) the relevant conditions were satisfied in relation to the authorisation, and

(b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 28(2) are satisfied in relation to the authorisation.

(4) For the purposes of subsection (3) the relevant conditions are--

(a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that--

(i) the individual was a designated person for the purposes of section 28,

(ii) the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and

(iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,

(b) in relation to a grant, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that--

(i) the individual was a designated person for the purposes of section 28,

(ii) the grant of the authorisation was not in breach of any restrictions imposed by virtue of section 30(3), and

- (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and
  - (c) in relation to any other grant by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.
- (5) The relevant judicial authority may give approval under this section to the granting of an authorisation under section 29 if, and only if, the relevant judicial authority is satisfied that--
- (a) at the time of the grant--
    - (i) there were reasonable grounds for believing that the requirements of section 29(2), and any requirements imposed by virtue of section 29(7)(b), were satisfied in relation to the authorisation, and
    - (ii) the relevant conditions were satisfied in relation to the authorisation, and
  - (b) at the time when the relevant judicial authority is considering the matter, there remain reasonable grounds for believing that the requirements of section 29(2), and any requirements imposed by virtue of section 29(7)(b), are satisfied in relation to the authorisation.
- (6) For the purposes of subsection (5) the relevant conditions are--
- (a) in relation to a grant by an individual holding an office, rank or position in a local authority in England or Wales, that--
    - (i) the individual was a designated person for the purposes of section 29,
    - (ii) the grant of the authorisation was not in breach of any prohibition imposed by virtue of section 29(7)(a) or any restriction imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied,
  - (b) in relation to a grant, for any purpose relating to a Northern Ireland excepted or reserved matter, by an individual holding an office, rank or position in a district council in Northern Ireland, that--
    - (i) the individual was a designated person for the purposes of section 29,
    - (ii) the grant of the authorisation was not in breach of any prohibition imposed by virtue of section 29(7)(a) or any restriction imposed by virtue of section 30(3), and
    - (iii) any other conditions that may be provided for by an order made by the Secretary of State were satisfied, and
  - (c) in relation to any other grant by a relevant person, that any conditions that may be provided for by an order made by the Secretary of State were satisfied.
- (7) In this section--

"local authority in England" means--

- (a) a district or county council in England,
- (b) a London borough council,
- (c) the Common Council of the City of London in its capacity as a local authority, or
- (d) the Council of the Isles of Scilly,

"local authority in Wales" means any county council or county borough council in Wales,

"Northern Ireland excepted or reserved matter" means an excepted or reserved matter (within the meaning of section 4(1) of the Northern Ireland Act 1998),

"Northern Ireland transferred matter" means a transferred matter (within the meaning of section 4(1) of the Act of 1998),

"relevant judicial authority" means--

- (a) in relation to England and Wales, a justice of the peace,
- (b) in relation to Scotland, a sheriff, and
- (c) in relation to Northern Ireland, a district judge (magistrates' courts) in Northern Ireland,

"relevant person" means--

- (a) an individual holding an office, rank or position in a local authority in England or Wales,
- (b) also, in relation to a grant for any purpose relating to a Northern Ireland excepted or reserved matter, an individual holding an office, rank or position in a district council in Northern Ireland, and
- (c) also, in relation to any grant of a description that may be prescribed for the purposes of this subsection by an order made by the Secretary of State or every grant if so prescribed, a person of a description so prescribed.

(8) No order of the Secretary of State--

- (a) may be made under subsection (7) unless a draft of the order has been laid before Parliament and approved by a resolution of each House;
- (b) may be made under this section so far as it makes provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Scottish Parliament;
- (c) may be made under this section so far as it makes provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly and would deal with a Northern Ireland transferred matter.

### **32B Procedure for judicial approval**

- (1) The public authority with which the relevant person holds an office, rank or position may apply to the relevant judicial authority for an order under section 32A approving the grant of an authorisation.
- (2) The applicant is not required to give notice of the application to--
  - (a) any person to whom the authorisation relates, or
  - (b) such a person's legal representatives.
- (3) Where, on an application under this section, the relevant judicial authority refuses to approve the grant of the authorisation concerned, the relevant judicial authority may make an order quashing the authorisation.
- (4) In this section "relevant judicial authority" and "relevant person" have the same meaning as in section 32A."

### **33 Rules for grant of authorisations**

- (1) A person who is a designated person for the purposes of section 28 or 29 by reference to his office, rank or position with a police force. . . shall not grant an authorisation under that section except on an application made by a member of the same force. . . (subject to subsection (1ZB)).
  - (1ZA) Subsection (1ZB) applies if the chief officer of police of a police force ("the authorising force") has made an agreement under section 23(1) of the Police Act 1996 with the chief office of police of one or more other police forces.
  - (1ZB) A person who is a designated person for the purposes of section 28 or 29 by reference to an office, rank or position with the authorising force may grant an authorisation under that section on an application made by a member of a collaborative force.
  - (1ZC) For the purposes of subsection (1ZB) a police force is a collaborative force if--
    - (a) its chief officer of police is a party to the agreement mentioned in subsection (1ZA); and
    - (b) its members are permitted by the terms of the agreement to make applications for authorisations under section 28 or 29 to a person who is a designated person for the purposes of that section by reference to an office, rank or position with the authorising force.
  - (1ZD) . . .
  - (1ZE) . . .

(1ZF) . . .

(1A) A person who is a designated person for the purposes of section 28 or 29 by reference to his office or position with the National Crime Agency shall not grant an authorisation under that section except on an application made by a member of the staff of the Agency.

(1B) . . .

(2) A person who is a designated person for the purposes of section 28 or 29 by reference to office, rank or position in Her Majesty's Revenue and Customs shall not grant an authorisation under that section except on an application made by an officer of Revenue and Customs.

(3) Subject to subsection (3ZB), a person who is a senior authorising officer by reference to a police force . . . shall not grant an authorisation for the carrying out of intrusive surveillance except—

(a) on an application made by a member of the same force. . .; and

(b) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any residential premises, where those premises are in the area of operation of that force. . .

(3ZA) Subsection (3ZB) applies if--

(a) the chief officer of police of a police force ("the surveillance authorising force") has made an agreement under section 23(1) of the Police Act 1996 with the chief office of police of one or more other police forces; and

(b) an application for an authorisation for the carrying out of intrusive surveillance is made by a member of a collaborative force.

(3ZB) A person who is a senior authorising officer by reference to the surveillance authorising force may--

(a) grant the authorisation;

(b) in a case where the authorisation is for the carrying out of intrusive surveillance in relation to any residential premises, grant the authorisation only in relation to premises in the area which is--

(i) the area of operation of a collaborative force; and

(ii) specified in relation to members of that force in the agreement mentioned in subsection (3ZA).

(3ZC) For the purposes of subsections (3ZA) and (3ZB) a police force is a collaborative force if--

(a) its chief officer of police is a party to the agreement mentioned in subsection (3ZA); and

(b) its members are permitted by the terms of the agreement to make applications for authorisations for the carrying out of intrusive surveillance to a person who is a senior authorising officer by reference to the surveillance authorising force.

(3ZD) . . .

(3ZE) . . .

(3ZF) . . .

(3A) The Director General of the National Crime Agency or a person designated for the purposes of section 32(6)(k) by that Director General shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by a National Crime Agency officer.

(4) A person who is a senior authorising officer by virtue of a designation by the Commissioners for Her Majesty's Revenue and Customs shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of Revenue and Customs.

(4ZA) A senior official who is a senior authorising officer by virtue of a designation by the Secretary of State under section 32(6)(ma) shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an immigration officer.

(4A) The chair of the CMA shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by an officer of the CMA.

(5) A single authorisation may combine both--

(a) an authorisation granted under this Part by, or on the application of, an individual who is a member of a police force, a National Crime Agency officer . . ., or who is an officer of Revenue and Customs, an immigration officer or the chair or an officer of the CMA; and

(b) an authorisation given by, or on the application of, that individual under Part III of the Police Act 1997;

but the provisions of this Act or that Act that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.

(5A) In subsections (1ZA) to (1ZC) and (3ZA) to (3ZC) a reference to a police force is to the following--

(a) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);

(b) the metropolitan police force; and

(c) the City of London police force.

(5B) . . .

(6) For the purposes of this section--

- (a) the area of operation of a police force maintained under section 2 of the Police Act 1996, of the metropolitan police force or, of the City of London police force . . . is the area for which that force is maintained;
- (aa) the area of operation of the Police Service of Scotland is Scotland;
- (b) the area of operation of the Police Service of Northern Ireland is Northern Ireland;
- (c) residential premises are in the area of operation of the Ministry of Defence Police if they are premises where the members of that police force, under section 2 of the Ministry of Defence Police Act 1987, have the powers and privileges of a constable;
- (d) residential premises are in the area of operation of the Royal Navy Police, the Royal Military Police or the Royal Air Force Police if they are premises owned or occupied by, or used for residential purposes by, a person subject to service law or a civilian subject to service discipline;
- (e) the area of operation of the British Transport Police . . . is the United Kingdom;
- (f) . . .

and references in this section to the United Kingdom or to any part or area of the United Kingdom include any adjacent waters within the seaward limits of the territorial waters of the United Kingdom.

(7) In subsection (6) "subject to service law" and "civilian subject to service discipline" have the same meanings as in the Armed Forces Act 2006.

### **34 Grant of authorisations in the senior officer's absence**

(1) This section applies in the case of an application for an authorisation for the carrying out of intrusive surveillance where--

- (a) the application is one made by a member of a police force, a National Crime Agency officer or by an officer of the CMA or an officer of Revenue and Customs or an immigration officer; and
- (b) the case is urgent.

(2) If--

- (a) it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by any person who is a senior authorising officer by reference to the force or Agency in question or, as the case may be, as the chair of the CMA or by virtue of a designation by the Commissioners for Her Majesty's Revenue and Customs or the Secretary of State, and
- (b) it also not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a person (if there is one) who is entitled, as a

designated deputy of a senior authorising officer, to exercise the functions in relation to that application of such an officer,

the application may be made to and considered by any person who is entitled under subsection (4) to act for any senior authorising officer who would have been entitled to consider the application.

(3) A person who considers an application under subsection (1) shall have the same power to grant an authorisation as the person for whom he is entitled to act.

(4) For the purposes of this section--

(a) a person is entitled to act for the chief constable of a police force maintained under section 2 of the Police Act 1996 if he holds the rank of assistant chief constable in that force;

(b) a person is entitled to act for the Commissioner of Police of the Metropolis, or for an Assistant Commissioner of Police of the Metropolis, if he holds the rank of commander in the metropolitan police force;

(c) a person is entitled to act for the Commissioner of Police for the City of London if he holds the rank of commander in the City of London police force;

(d) a person is entitled to act for the chief constable of the Police Service of Scotland if he holds the rank of deputy or assistant chief constable of the Police Service of Scotland;

(e) a person is entitled to act for the Chief Constable of the Police Service of Northern Ireland, or for the Deputy Chief Constable of the Police Service of Northern Ireland, if he holds the rank of assistant chief constable in the Police Service of Northern Ireland;

(f) a person is entitled to act for the Chief Constable of the Ministry of Defence Police if he holds the rank of deputy or assistant chief constable in that force;

(g) a person is entitled to act for the Provost Marshal of the Royal Navy Police if he holds the position of assistant Provost Marshal in that force;

(h) a person is entitled to act for the Provost Marshal of the Royal Military Police or the Provost Marshal of the Royal Air Force Police if he holds the position of deputy Provost Marshal in the police force in question;

(i) a person is entitled to act for the Chief Constable of the British Transport Police if he holds the rank of deputy or assistant chief constable in that force;

(j) a person is entitled to act for the Director General of the National Crime Agency if he is a person designated for the purposes of this paragraph by that Director General as a person entitled so to act in an urgent case;

(l) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation by the Commissioners for Her Majesty's Revenue and Customs, if he

is a senior official designated for the purposes of this paragraph by those Commissioners as a person entitled so to act in an urgent case;

(la) a person is entitled to act for a person who is a senior authorising officer by virtue of a designation under section 32(6)(ma), if the person is a senior official in the department of the Secretary of State by whom functions relating to immigration are exercisable who is designated for the purposes of this paragraph by the Secretary of State as a person entitled so to act in an urgent case;

(m) a person is entitled to act for the chair of the CMA if he is an officer of the CMA designated by it for the purposes of this paragraph as a person entitled so to act in an urgent case.

(5) . . .

(6) In this section "designated deputy"--

(a) in relation to the chief constable for a police force in England and Wales, means--

(i) the person who is the appropriate deputy chief constable for the purposes of section 12A(1) of the Police Act 1996, or

(ii) a person holding the rank of assistant chief constable who is designated to act under section 12A(2) of that Act;

(aa) in relation to the chief constable of the Police Service of Scotland, means the deputy chief constable designated under section 18(3) of the Police and Fire Reform (Scotland) Act 2012;

(b) in relation to the Commissioner of Police for the City of London, means a person authorised to act under section 25 of the City of London Police Act 1839;

(c) . . . .

### **35 Notification of authorisations for intrusive surveillance**

(1) Where a person grants or cancels a police, the National Crime Agency, Revenue and Customs, immigration or CMA authorisation for the carrying out of intrusive surveillance, he shall give notice that he has done so to ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner].

(2) A notice given for the purposes of subsection (1)--

(a) must be given in writing as soon as reasonably practicable after the grant or, as the case may be, cancellation of the authorisation to which it relates;

(b) must be given in accordance with any such arrangements made for the purposes of this paragraph by the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] as are for the time being in force; and

(c) must specify such matters as the Secretary of State may by order prescribe.

(3) A notice under this section of the grant of an authorisation shall, as the case may be, either--

(a) state that the approval of a ~~Surveillance Commissioner~~ [Judicial Commissioner] is required by section 36 before the grant of the authorisation will take effect; or

(b) state that the case is one of urgency and set out the grounds on which the case is believed to be one of urgency.

(4) Where a notice for the purposes of subsection (1) of the grant of an authorisation has been received by ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner], he shall, as soon as practicable--

(a) scrutinise the authorisation; and

(b) in a case where notice has been given in accordance with subsection (3)(a), decide whether or not to approve the authorisation.

(5) Subject to subsection (6), the Secretary of State shall not make an order under subsection (2)(c) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(6) Subsection (5) does not apply in the case of the order made on the first occasion on which the Secretary of State exercises his power to make an order under subsection (2)(c).

(7) The order made on that occasion shall cease to have effect at the end of the period of forty days beginning with the day on which it was made unless, before the end of that period, it has been approved by a resolution of each House of Parliament.

(8) For the purposes of subsection (7)--

(a) the order's ceasing to have effect shall be without prejudice to anything previously done or to the making of a new order; and

(b) in reckoning the period of forty days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

(9) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.

(10) In this section references to a police, the National Crime Agency, Revenue and Customs, immigration or CMA authorisation are references to an authorisation granted by--

(a) a person who is a senior authorising officer by reference to a police force or the National Crime Agency;

(b) a person who is a senior authorising officer by virtue of a designation under section 32(6)(m) or (ma); . . .

(ba) the chair of the CMA; or

(c) a person who for the purposes of section 34 is entitled to act for a person falling within paragraph (a) or for a person falling within paragraph (b) or for a person falling within paragraph (ba).

### **36 Approval required for authorisations to take effect**

(1) This section applies where an authorisation for the carrying out of intrusive surveillance has been granted on the application of--

- (a) a member of a police force;
- (b) a National Crime Agency officer;
- (d) an officer of Revenue and Customs; . . .
- (da) an immigration officer; or
- (e) an officer of the CMA.

(2) Subject to subsection (3), the authorisation shall not take effect until such time (if any) as--

- (a) the grant of the authorisation has been approved ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner]; and
- (b) written notice of the Commissioner's decision to approve the grant of the authorisation has been given, in accordance with subsection (4), to the person who granted the authorisation.

(3) Where the person who grants the authorisation--

- (a) believes that the case is one of urgency, and
- (b) gives notice in accordance with section 35(3)(b),

subsection (2) shall not apply to the authorisation, and the authorisation shall have effect from the time of its grant.

(4) Where subsection (2) applies to the authorisation--

- (a) a ~~Surveillance Commissioner~~ [Judicial Commissioner] shall give his approval under this section to the authorisation if, and only if, he is satisfied that there are reasonable grounds for believing that the requirements of section 32(2)(a) and (b) are satisfied in the case of the authorisation; and
- (b) a ~~Surveillance Commissioner~~ [Judicial Commissioner] who makes a decision as to whether or not the authorisation should be approved shall, as soon as reasonably practicable after making that decision, give written notice of his decision to the person who granted the authorisation.

(5) If ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] decides not to approve an authorisation to which subsection (2) applies, he shall make a report of his findings to the most senior relevant person.

(6) In this section "the most senior relevant person" means--

(a) where the authorisation was granted by the senior authorising officer with any police force who is not someone's deputy, that senior authorising officer;

(b) where the authorisation was granted by the Director General of the National Crime Agency, that Director General;

(c) where the authorisation was granted by a senior authorising officer with a police force who is someone's deputy, the senior authorising officer whose deputy granted the authorisation;

(d) where the authorisation was granted by a person designated for the purposes of section 32(6)(k), or by a person entitled to act for the Director General of the National Crime Agency by virtue of section 34(4)(j), that Director General;

(f) where the authorisation was granted by a person entitled to act for a senior authorising officer under section 34(4)(a) to (i), the senior authorising officer in the force in question who is not someone's deputy; . . .

(g) where the authorisation was granted by an officer of Revenue and Customs, the officer of Revenue and Customs for the time being designated for the purposes of this paragraph by a written notice given to the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] by the Commissioners for Her Majesty's Revenue and Customs; . . .

(ga) where the authorisation was granted by a senior official designated under section 32(6)(ma) or entitled to act for such an official under section 34(4)(la), the senior official designated under section 32(6)(ma); and

(h) where the authorisation was granted by the chair of the CMA or a person entitled to act for the chair of the CMA by virtue of section 34(4)(m), that chair.

(7) The references in subsection (6) to a person's deputy are references to the following--

(a) in relation to--

(i) a chief constable of a police force maintained under section 2 of the Police Act 1996,

(ii) the Commissioner of Police for the City of London, or

(iii) the chief constable of the Police Service of Scotland,

to his designated deputy;

(b) in relation to the Commissioner of Police of the Metropolis, to an Assistant Commissioner of Police of the Metropolis; and

(c) in relation to the Chief Constable of the Police Service of Northern Ireland, to the Deputy Chief Constable of the Police Service of Northern Ireland;

and in this subsection and that subsection "designated deputy" has the same meaning as in section 34.

(8) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.

### **37 Quashing of police and Revenue and Customs authorisations etc**

(1) This section applies where an authorisation for the carrying out of intrusive surveillance has been granted on the application of--

- (a) a member of a police force;
- (b) a National Crime Agency officer;
- (d) an officer of Revenue and Customs; . . .
- (da) an immigration officer; or
- (e) an officer of the CMA.

(2) Where ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] is at any time satisfied that, at the time when the authorisation was granted or at any time when it was renewed, there were no reasonable grounds for believing that the requirements of section 32(2)(a) and (b) were satisfied, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.

(3) If ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] is satisfied at any time while the authorisation is in force that there are no longer any reasonable grounds for believing that the requirements of section 32(2)(a) and (b) are satisfied in relation to the authorisation, he may cancel the authorisation with effect from such time as appears to him to be the time from which those requirements ceased to be so satisfied.

(4) Where, in the case of any authorisation of which notice has been given in accordance with section 35(3)(b), ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] is at any time satisfied that, at the time of the grant or renewal of the authorisation to which that notice related, there were no reasonable grounds for believing that the case was one of urgency, he may quash the authorisation with effect, as he thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation

(5) Subject to subsection (7), where ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] quashes an authorisation under this section, he may order the destruction of any records relating wholly or partly to information obtained by the authorised conduct after the time from which his decision takes effect.

(6) Subject to subsection (7), where--

(a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (2) or (4)), and

(b) ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] is satisfied that there was a time while the authorisation was in force when there were no reasonable grounds for believing that the requirements of section 32(2)(a) and (b) continued to be satisfied in relation to the authorisation,

he may order the destruction of any records relating, wholly or partly, to information obtained at such a time by the authorised conduct.

(7) No order shall be made under this section for the destruction of any records required for pending criminal or civil proceedings.

(8) Where ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] exercises a power conferred by this section, he shall, as soon as reasonably practicable, make a report of his exercise of that power, and of his reasons for doing so--

(a) to the most senior relevant person (within the meaning of section 36); and

(b) to the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner (if he is not that Commissioner)].

(9) Where an order for the destruction of records is made under this section, the order shall not become operative until such time (if any) as--

(a) ~~the period~~ [any period] for appealing against the decision to make the order has expired; and

(b) any appeal brought within that period has been dismissed by the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner].

(10) No notice shall be required to be given under section 35(1) in the case of a cancellation under subsection (3) of this section.

### **38 Appeals against decisions by Surveillance Commissioners [Judicial Commissioners]**

(1) Any senior authorising officer may appeal to the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] against any of the following--

(a) any refusal of ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner (other than the Investigatory Powers Commissioner)] to approve an authorisation for the carrying out of intrusive surveillance;

(b) any decision of such a Commissioner to quash or cancel such an authorisation;

(c) any decision of such a Commissioner to make an order under section 37 for the destruction of records.

(2) In the case of an authorisation granted by the designated deputy of a senior authorising office or by a person who for the purposes of section 34 is entitled to act for a senior authorising officer, that designated deputy or person shall also be entitled to appeal under this section.

(3) An appeal under this section must be brought within the period of seven days beginning with the day on which the refusal or decision appealed against is reported to the appellant.

(4) Subject to subsection (5), the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner], on an appeal under this section, shall allow the appeal if--

(a) he is satisfied that there were reasonable grounds for believing that the requirements of section 32(2)(a) and (b) were satisfied in relation to the authorisation at the time in question; and

(b) he is not satisfied that the authorisation is one of which notice was given in accordance with section 35(3)(b) without there being any reasonable grounds for believing that the case was one of urgency.

(5) If, on an appeal falling within subsection (1)(b), the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner]--

(a) is satisfied that grounds exist which justify the quashing or cancellation under section 37 of the authorisation in question, but

(b) considers that the authorisation should have been quashed or cancelled from a different time from that from which it was quashed or cancelled by the ~~ordinary Surveillance Commissioner~~ [Judicial Commissioner] against whose decision the appeal is brought,

he may modify that Commissioner's decision to quash or cancel the authorisation, and any related decision for the destruction of records, so as to give effect to the decision under section 37 that he considers should have been made.

(6) Where, on an appeal under this section against a decision to quash or cancel an authorisation, ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] allows the appeal he shall also quash any related order for the destruction of records relating to information obtained by the authorised conduct.

(7) In this section "designated deputy" has the same meaning as in section 34.

### **39 Appeals to the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner]: supplementary**

(1) Where the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] has determined an appeal under section 38, he shall give notice of his determination to both--

(a) the person by whom the appeal was brought; and

- (b) the ~~ordinary Surveillance Commissioner~~ [Judicial Commissioner] whose decision was appealed against.
- (2) Where the determination of the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] on an appeal under section 38 is a determination to dismiss the appeal, the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] shall make a report of his findings--
- (a) to the persons mentioned in subsection (1); and
  - (b) to the Prime Minister.
- (3) ~~Subsections (3) and (4) of section 107 of the Police Act 1997~~ [subsections (6) to (9) of section 201 of the Investigatory Powers Act 2016] (reports to be laid before Parliament and exclusion of matters from the report) apply in relation to any report to the Prime Minister under subsection (2) of this section as they apply in relation to any report under ~~subsection (2) of that section~~ [subsection (1) of that section].
- (4) Subject to subsection (2) of this section, the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] shall not give any reasons for any determination of his on an appeal under section 38.

#### ~~40 Information to be provided to Surveillance Commissioners~~

~~It shall be the duty of--~~

- ~~(a) every member of a police force,~~
- ~~(b) every National Crime Agency officer,~~
- ~~(d) every officer of Revenue and Customs, . . .~~
- ~~(da) every immigration officer and every other official in the department of the Secretary of State by whom functions relating to immigration are exercisable, and~~
- ~~(e) every officer of the CMA,~~

~~to comply with any request of a Surveillance Commissioner for documents or information required by that Commissioner for the purpose of enabling him to carry out the functions of such a Commissioner under sections 35 to 39.~~

#### **41 Secretary of State authorisations**

- (1) The Secretary of State shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by--
- (a) a member of any of the intelligence services;
  - (b) an official of the Ministry of Defence;

- (c) a member of Her Majesty's forces;
- (d) an individual holding an office, rank or position with any such public authority as may be designated for the purposes of this section as an authority whose activities may require the carrying out of intrusive surveillance.

(2) Section 32 shall have effect in relation to the grant of an authorisation by the Secretary of State on the application of an official of the Ministry of Defence, or of a member of Her Majesty's forces, as if the only matters mentioned in subsection (3) of that section were--

- (a) the interests of national security; and
- (b) the purpose of preventing or detecting serious crime.

(3) The designation of any public authority for the purposes of this section shall be by order made by the Secretary of State.

(4) The Secretary of State may by order provide, in relation to any public authority, that an application for an authorisation for the carrying out of intrusive surveillance may be made by an individual holding an office, rank or position with that authority only where his office, rank or position is one prescribed by the order.

(5) The Secretary of State may by order impose restrictions--

- (a) on the authorisations for the carrying out of intrusive surveillance that may be granted on the application of an individual holding an office, rank or position with any public authority designated for the purposes of this section; and
- (b) on the circumstances in which, or the purposes for which, such authorisations may be granted on such an application.

(6) The Secretary of State shall not make a designation under subsection (3) unless a draft of the order containing the designation has been laid before Parliament and approved by a resolution of each House.

(7) References in this section to a member of Her Majesty's forces do not include references to any member of Her Majesty's forces who is a member of a police force by virtue of his service with the Royal Navy Police, the Royal Military Police or the Royal Air Force Police.

#### **42 Intelligence services authorisations**

(1) The grant by the Secretary of State or, the Scottish Ministers (by virtue of provision under section 63 of the Scotland Act 1998) on the application of a member of one of the intelligence services of any authorisation under this Part must be made by the issue of a warrant.

(2) A single warrant issued by the Secretary of State or, the Scottish Ministers (by virtue of provision under section 63 of the Scotland Act 1998) may combine both--

- (a) an authorisation under this Part; and
- (b) an intelligence services warrant;

but the provisions of this Act or the Intelligence Services Act 1994 that are applicable in the case of the authorisation under this Part or the intelligence services warrant shall apply separately in relation to the part of the combined warrant to which they are applicable.

(3) Intrusive surveillance in relation to any premises or vehicle in the British Islands shall be capable of being authorised by a warrant issued under this Part on the application of a member of the Secret Intelligence Service or GCHQ only if the authorisation contained in the warrant is one satisfying the requirements of section 32(2)(a) otherwise than in connection with any functions of that intelligence service in support of the prevention or detection of serious crime.

(4) Subject to subsection (5), the functions of the Security Service shall include acting on behalf of the Secret Intelligence Service or GCHQ in relation to--

- (a) the application for and grant of any authorisation under this Part in connection with any matter within the functions of the Secret Intelligence Service or GCHQ; and
- (b) the carrying out, in connection with any such matter, of any conduct authorised by such an authorisation.

(5) Nothing in subsection (4) shall authorise the doing of anything by one intelligence service on behalf of another unless--

- (a) it is something which either the other service or a member of the other service has power to do; and
- (b) it is done otherwise than in connection with functions of the other service in support of the prevention or detection of serious crime.

(6) In this section "intelligence services warrant" means a warrant under section 5 of the Intelligence Services Act 1994.

### **43 General rules about grant, renewal and duration**

(1) An authorisation under this Part--

- (a) may be granted or renewed orally in any urgent case in which the entitlement to act of the person granting or renewing it is not confined to urgent cases; and
- (b) in any other case, must be in writing.

(1A) Subsection (1)(a) does not apply in relation to an authorisation under section 28 or 29 to which section 32A applies.

(2) A single authorisation may combine two or more different authorisations under this Part; but the provisions of this Act that are applicable in the case of each of the

authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.

(3) Subject to subsections (4) and (8), an authorisation under this Part shall cease to have effect at the end of the following period--

(a) in the case of an authorisation which--

(i) has not been renewed and was granted either orally or by a person whose entitlement to act is confined to urgent cases, or

(ii) was last renewed either orally or by such a person,

the period of seventy-two hours beginning with the time when the grant of the authorisation or, as the case may be, its latest renewal takes effect;

(b) in a case not falling within paragraph (a) in which the authorisation is for the conduct or the use of a covert human intelligence source, the period of twelve months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect; and

(c) in any case not falling within paragraph (a) or (b), the period of three months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect.

(4) Subject to subsection (6), an authorisation under this Part may be renewed, at any time before the time at which it ceases to have effect, by any person who would be entitled to grant a new authorisation in the same terms.

(5) Sections 28 to 41 shall have effect in relation to the renewal of an authorisation under this Part as if references to the grant of an authorisation included references to its renewal.

(6) A person shall not renew an authorisation for the conduct or the use of a covert human intelligence source, unless he--

(a) is satisfied that a review has been carried out of the matters mentioned in subsection (7); and

(b) has, for the purpose of deciding whether he should renew the authorisation, considered the results of that review.

(6A) The relevant judicial authority (within the meaning given by subsection (7) of section 32A) shall not make an order under that section approving the renewal of an authorisation for the conduct or the use of a covert human intelligence source unless the relevant judicial authority--

(a) is satisfied that a review has been carried out of the matters mentioned in subsection (7) below, and

(b) has, for the purpose of deciding whether to make the order, considered the results of that review.

(7) The matters mentioned in subsections (6) and (6A) are--

- (a) the use made of the source in the period since the grant or, as the case may be, latest renewal of the authorisation; and
- (b) the tasks given to the source during that period and the information obtained from the conduct or the use of the source.

(8) The Secretary of State may by order provide in relation to authorisations of such descriptions as may be specified in the order that subsection (3) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by that subsection as may be fixed by or determined in accordance with that order.

(9) References in this section to the time at which, or the day on which, the grant or renewal of an authorisation takes effect are references--

- (a) in the case of the grant of an authorisation to which paragraph (c) does not apply, to the time at which or, as the case may be, day on which the authorisation is granted;
- (b) in the case of the renewal of an authorisation to which paragraph (c) does not apply, to the time at which or, as the case may be, day on which the authorisation would have ceased to have effect but for the renewal; and
- (c) in the case of any grant or renewal that takes effect under subsection (2) of section 32A or 36 at a time or on a day later than that given by paragraph (a) or (b), to the time at which or, as the case may be, day on which the grant or renewal takes effect in accordance with that subsection.

(10) In relation to any authorisation granted by a member of any of the intelligence services, and in relation to any authorisation contained in a warrant issued by the Secretary of State on the application of a member of any of the intelligence services, this section has effect subject to the provisions of section 44.

#### **44 Special rules for intelligence services authorisations**

(1) Subject to subsection (2), a warrant containing an authorisation for the carrying out of intrusive surveillance--

- (a) shall not be issued on the application of a member of any of the intelligence services, and
- (b) if so issued shall not be renewed,

except under the hand of the Secretary of State or, in the case of a warrant issued by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), a member of the Scottish Executive.

(2) In an urgent case in which--

(a) an application for a warrant containing an authorisation for the carrying out of intrusive surveillance has been made by a member of any of the intelligence services, and

(b) the Secretary of State has himself or the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) have themselves expressly authorised the issue of the warrant in that case,

the warrant may be issued (but not renewed) under the hand of a senior official or, as the case may be, a member of the staff of the Scottish Administration who is a member of the Senior Civil Service and is designated by the Scottish Ministers as a person under whose hand a warrant may be issued in such a case (in this section referred to as "a designated official").

(3) Subject to subsection (6), a warrant containing an authorisation for the carrying out of intrusive surveillance which--

(a) was issued, on the application of a member of any of the intelligence services, under the hand of a senior official or, as the case may be, a designated official, and

(b) has not been renewed under the hand of the Secretary of State or, in the case of a warrant issued by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), a member of the Scottish Executive,

shall cease to have effect at the end of the second working day following the day of the issue of the warrant, instead of at the time provided for by section 43(3).

(4) Subject to subsections (3) and (6), where any warrant for the carrying out of intrusive surveillance which is issued or was last renewed on the application of a member of any of the intelligence services, the warrant (unless renewed or, as the case may be, renewed again) shall cease to have effect at the following time, instead of at the time provided for by section 43(3), namely--

(a) in the case of a warrant that has not been renewed, at the end of the period of six months beginning with the day on which it was issued; and

(b) in any other case, at the end of the period of six months beginning with the day on which it would have ceased to have effect if not renewed again.

(5) Subject to subsection (6), where--

(a) an authorisation for the carrying out of directed surveillance is granted by a member of any of the intelligence services, and

(b) the authorisation is renewed by an instrument endorsed under the hand of the person renewing the authorisation with a statement that the renewal is believed to be necessary on grounds falling within section 32(3)(a) or (c),

the authorisation (unless renewed again) shall cease to have effect at the end of the period of six months beginning with the day on which it would have ceased to have effect but for the renewal, instead of at the time provided for by section 43(3).

(6) The Secretary of State may by order provide in relation to authorisations of such descriptions as may be specified in the order that subsection (3), (4) or (5) is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period shorter than that provided for by that subsection as may be fixed by or determined in accordance with that order.

(7) Notwithstanding anything in section 43(2), in a case in which there is a combined warrant containing both--

- (a) an authorisation for the carrying out of intrusive surveillance, and
- (b) an authorisation for the carrying out of directed surveillance,

the reference in subsection (4) of this section to a warrant for the carrying out of intrusive surveillance is a reference to the warrant so far as it confers both authorisations.

#### **45 Cancellation of authorisations**

(1) The person who granted or, as the case may be, last renewed an authorisation under this Part shall cancel it if--

- (a) he is satisfied that the authorisation is one in relation to which the requirements of section 28(2)(a) and (b), 29(2)(a) and (b) or, as the case may be, 32(2)(a) and (b) are no longer satisfied; or
- (b) in the case of an authorisation under section 29, he is satisfied that arrangements for the source's case that satisfy the requirements mentioned in subsection (2)(c) of that section no longer exist.

(2) Where an authorisation under this Part was granted or, as the case may be, last renewed--

- (a) by a person entitled to act for any other person, or
- (b) by the deputy of any other person,

that other person shall cancel the authorisation if he is satisfied as to either of the matters mentioned in subsection (1).

(3) Where an authorisation under this Part was granted or, as the case may be, last renewed by a person whose deputy had power to grant it, that deputy shall cancel the authorisation if he is satisfied as to either of the matters mentioned in subsection (1).

(4) The Secretary of State may by regulations provide for the person by whom any duty imposed by this section is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it.

(5) Regulations under subsection (4) may provide for the person on whom the duty is to fall to be a person appointed in accordance with the regulations.

(6) The references in this section to a person's deputy are references to the following--

- (a) in relation to--
    - (i) a chief constable of a police force maintained under section 2 of the Police Act 1996,
    - (ii) the Commissioner of Police for the City of London, or
    - (iii) the chief constable of the Police Service of Scotland,
 to his designated deputy;
  - (b) in relation to the Commissioner of Police of the Metropolis, to an Assistant Commissioner of Police of the Metropolis; . . . and
  - (c) in relation to the Chief Constable of the Police Service of Northern Ireland, to the Deputy Chief Constable of the Police Service of Northern Ireland; . . .
  - (ca) . . .
  - (d) . . .
  - (e) . . .
- (7) In this section "designated deputy" has the same meaning as in section 34.

#### **46 Restrictions on authorisations extending to Scotland**

- (1) No person shall grant or renew an authorisation under this Part for the carrying out of any conduct if it appears to him--
- (a) that the authorisation is not one for which this Part is the relevant statutory provision for all parts of the United Kingdom; and
  - (b) that all the conduct authorised by the grant or, as the case may be, renewal of the authorisation is likely to take place in Scotland.
- (2) In relation to any authorisation, this Part is the relevant statutory provision for all parts of the United Kingdom in so far as it--
- (a) is granted or renewed on the grounds that it is necessary in the interests of national security or in the interests of the economic well-being of the United Kingdom;
  - (b) is granted or renewed by or on the application of a person holding any office, rank or position with any of the public authorities specified in subsection (3);
  - (c) authorises conduct of a person holding an office, rank or position with any of the public authorities so specified;
  - (d) authorises conduct of an individual acting as a covert human intelligence source for the benefit of any of the public authorities so specified; or
  - (e) authorises conduct that is surveillance by virtue of section 48(4).

(3) The public authorities mentioned in subsection (2) are--

- (a) each of the intelligence services;
- (b) Her Majesty's forces;
- (c) the Ministry of Defence;
- (d) the Ministry of Defence Police;
- (dza) the Civil Nuclear Constabulary;
- (da) the CMA;
- (db) the National Crime Agency;
- (e) the Commissioners for Her Majesty's Revenue and Customs; . . .
- (ea) the department of the Secretary of State by whom functions relating to immigration are exercisable; and
- (f) the British Transport Police.

(4) For the purposes of so much of this Part as has effect in relation to any other public authority by virtue of--

- (a) the fact that it is a public authority for the time being specified in Schedule 1, or
- (b) an order under subsection (1)(d) of section 41 designating that authority for the purposes of that section,

the authorities specified in subsection (3) of this section shall be treated as including that authority to the extent that the Secretary of State by order directs that the authority is a relevant public authority or, as the case may be, is a designated authority for all parts of the United Kingdom.

#### **47 Power to extend or modify authorisation provisions**

(1) The Secretary of State may by order do one or both of the following--

- (a) apply this Part, with such modifications as he thinks fit, to any such surveillance that is neither directed nor intrusive as may be described in the order;
- (b) provide for any description of directed surveillance to be treated for the purposes of this Part as intrusive surveillance.

(2) No order shall be made under this section unless a draft of it has been laid before Parliament and approved by a resolution of each House.

## 48 Interpretation of Part II

(1) In this Part--

"CMA" means the Competition and Markets Authority;

"covert human intelligence source" shall be construed in accordance with section 26(8);

"directed" and "intrusive", in relation to surveillance, shall be construed in accordance with section 26(2) to (6);

...

"private vehicle" means (subject to subsection (7)(a)) any vehicle which is used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it;

"residential premises" means (subject to subsection (7)(b)) so much of any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation (including hotel or prison accommodation that is so occupied or used);

"senior authorising officer" means a person who by virtue of subsection (6) of section 32 is a senior authorising officer for the purposes of that section;

"surveillance" shall be construed in accordance with subsections (2) to (4);

"surveillance device" means any apparatus designed or adapted for use in surveillance.

(2) Subject to subsection (3), in this Part "surveillance" includes--

(a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;

(b) recording anything monitored, observed or listened to in the course of surveillance; and

(c) surveillance by or with the assistance of a surveillance device.

(3) References in this Part to surveillance do not include references to--

(a) any conduct of a covert human intelligence source for obtaining or recording (whether or not using a surveillance device) any information which is disclosed in the presence of the source;

(b) the use of a covert human intelligence source for so obtaining or recording information; or

(c) any such entry on or interference with property or with wireless telegraphy as would be unlawful unless authorised under--

(i) section 5 of the Intelligence Services Act 1994 (warrants for the intelligence services); or

(ii) Part III of the Police Act 1997 (powers of the police and of officers of Revenue and Customs).

(4) References in this Part to surveillance include references to the interception of a communication in the course of its transmission by means of a postal service or telecommunication system if, and only if--

(a) the communication is one sent by or intended for a person who has consented to the interception of communications sent by or to him; and

(b) there is no interception warrant authorising the interception.

(5) References in this Part to an individual holding an office or position with a public authority include references to any member, official or employee of that authority.

(6) For the purposes of this Part the activities of a covert human intelligence source which are to be taken as activities for the benefit of a particular public authority include any conduct of his as such a source which is in response to inducements or requests made by or on behalf of that authority.

(7) In subsection (1)--

(a) the reference to a person having the right to use a vehicle does not, in relation to a motor vehicle, include a reference to a person whose right to use the vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey; and

(b) the reference to premises occupied or used by any person for residential purposes or otherwise as living accommodation does not include a reference to so much of any premises as constitutes any common area to which he has or is allowed access in connection with his use or occupation of any accommodation.

(8) In this section--

"premises" includes any vehicle or moveable structure and any other place whatever, whether or not occupied as land;

"vehicle" includes any vessel, aircraft or hovercraft.

### **Part III - INVESTIGATION OF ELECTRONIC DATA PROTECTED BY ENCRYPTION ETC**

*Amended by clause 200 of the Bill (Functions under other Parts and other enactments).  
Minor and consequential amendments are made by Schedule 10 to the Bill.*

#### **49 Notices requiring disclosure**

(1) This section applies where any protected information--

(a) has come into the possession of any person by means of the exercise of a statutory power to seize, detain, inspect, search or otherwise to interfere with documents or other property, or is likely to do so;

(b) has come into the possession of any person by means of the exercise of any statutory power to intercept communications, or is likely to do so;

(c) has come into the possession of any person by means of the exercise of any power conferred by an authorisation under ~~section 22(3) or (3B) or under Part II~~ [Part 3 of the Investigatory Powers Act 2016 or Part 2 of this Act], or as a result of the giving of a notice ~~under section 22(4)~~ [in pursuance of an authorisation under Part 3 of the Act of 2016 or as the result of the issue of a warrant under Chapter 2 of Part 6 of the Act of 2016], or is likely to do so;

(d) has come into the possession of any person as a result of having been provided or disclosed in pursuance of any statutory duty (whether or not one arising as a result of a request for information), or is likely to do so; or

(e) has, by any other lawful means not involving the exercise of statutory powers, come into the possession of any of the intelligence services, the police, the National Crime Agency. . . or Her Majesty's Revenue and Customs, or is likely so to come into the possession of any of those services, the police, the National Crime Agency. . . or Her Majesty's Revenue and Customs.

(2) If any person with the appropriate permission under Schedule 2 believes, on reasonable grounds--

(a) that a key to the protected information is in the possession of any person,

(b) that the imposition of a disclosure requirement in respect of the protected information is--

(i) necessary on grounds falling within subsection (3), or

(ii) necessary for the purpose of securing the effective exercise or proper performance by any public authority of any statutory power or statutory duty,

(c) that the imposition of such a requirement is proportionate to what is sought to be achieved by its imposition, and

(d) that it is not reasonably practicable for the person with the appropriate permission to obtain possession of the protected information in an intelligible form without the giving of a notice under this section,

the person with that permission may, by notice to the person whom he believes to have possession of the key, impose a disclosure requirement in respect of the protected information.

(3) A disclosure requirement in respect of any protected information 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; or
- (c) in the interests of the economic well-being of the United Kingdom.

(4) A notice under this section imposing a disclosure requirement in respect of any protected information--

- (a) must be given in writing or (if not in writing) must be given in a manner that produces a record of its having been given;
- (b) must describe the protected information to which the notice relates;
- (c) must specify the matters falling within subsection (2)(b)(i) or (ii) by reference to which the notice is given;
- (d) must specify the office, rank or position held by the person giving it;
- (e) must specify the office, rank or position of the person who for the purposes of Schedule 2 granted permission for the giving of the notice or (if the person giving the notice was entitled to give it without another person's permission) must set out the circumstances in which that entitlement arose;
- (f) must specify the time by which the notice is to be complied with; and
- (g) must set out the disclosure that is required by the notice and the form and manner in which it is to be made;

and the time specified for the purposes of paragraph (f) must allow a period for compliance which is reasonable in all the circumstances.

(5) Where it appears to a person with the appropriate permission--

- (a) that more than one person is in possession of the key to any protected information,
- (b) that any of those persons is in possession of that key in his capacity as an officer or employee of any body corporate, and
- (c) that another of those persons is the body corporate itself or another officer or employee of the body corporate,

a notice under this section shall not be given, by reference to his possession of the key, to any officer or employee of the body corporate unless he is a senior officer of the body corporate or it appears to the person giving the notice that there is no senior officer of the body corporate and (in the case of an employee) no more senior employee of the body corporate to whom it is reasonably practicable to give the notice.

(6) Where it appears to a person with the appropriate permission--

- (a) that more than one person is in possession of the key to any protected information,

(b) that any of those persons is in possession of that key in his capacity as an employee of a firm, and

(c) that another of those persons is the firm itself or a partner of the firm,

a notice under this section shall not be given, by reference to his possession of the key, to any employee of the firm unless it appears to the person giving the notice that there is neither a partner of the firm nor a more senior employee of the firm to whom it is reasonably practicable to give the notice.

(7) Subsections (5) and (6) shall not apply to the extent that there are special circumstances of the case that mean that the purposes for which the notice is given would be defeated, in whole or in part, if the notice were given to the person to whom it would otherwise be required to be given by those subsections.

(8) A notice under this section shall not require the making of any disclosure to any person other than--

(a) the person giving the notice; or

(b) such other person as may be specified in or otherwise identified by, or in accordance with, the provisions of the notice.

(9) A notice under this section shall not require the disclosure of any key which--

(a) is intended to be used for the purpose only of generating electronic signatures; and

(b) has not in fact been used for any other purpose.

(10) In this section "senior officer", in relation to a body corporate, means a director, manager, secretary or other similar officer of the body corporate; and for this purpose "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(11) Schedule 2 (definition of the appropriate permission) shall have effect.

## **50 Effect of notice imposing disclosure requirement**

(1) Subject to the following provisions of this section, the effect of a section 49 notice imposing a disclosure requirement in respect of any protected information on a person who is in possession at a relevant time of both the protected information and a means of obtaining access to the information and of disclosing it in an intelligible form is that he--

(a) shall be entitled to use any key in his possession to obtain access to the information or to put it into an intelligible form; and

(b) shall be required, in accordance with the notice imposing the requirement, to make a disclosure of the information in an intelligible form.

(2) A person subject to a requirement under subsection (1)(b) to make a disclosure of any information in an intelligible form shall be taken to have complied with that requirement if--

(a) he makes, instead, a disclosure of any key to the protected information that is in his possession; and

(b) that disclosure is made, in accordance with the notice imposing the requirement, to the person to whom, and by the time by which, he was required to provide the information in that form.

(3) Where, in a case in which a disclosure requirement in respect of any protected information is imposed on any person by a section 49 notice--

(a) that person is not in possession of the information,

(b) that person is incapable, without the use of a key that is not in his possession, of obtaining access to the information and of disclosing it in an intelligible form, or

(c) the notice states, in pursuance of a direction under section 51, that it can be complied with only by the disclosure of a key to the information,

the effect of imposing that disclosure requirement on that person is that he shall be required, in accordance with the notice imposing the requirement, to make a disclosure of any key to the protected information that is in his possession at a relevant time.

(4) Subsections (5) to (7) apply where a person ("the person given notice")--

(a) is entitled or obliged to disclose a key to protected information for the purpose of complying with any disclosure requirement imposed by a section 49 notice; and

(b) is in possession of more than one key to that information.

(5) It shall not be necessary, for the purpose of complying with the requirement, for the person given notice to make a disclosure of any keys in addition to those the disclosure of which is, alone, sufficient to enable the person to whom they are disclosed to obtain access to the information and to put it into an intelligible form.

(6) Where--

(a) subsection (5) allows the person given notice to comply with a requirement without disclosing all of the keys in his possession, and

(b) there are different keys, or combinations of keys, in the possession of that person the disclosure of which would, under that subsection, constitute compliance,

the person given notice may select which of the keys, or combination of keys, to disclose for the purpose of complying with that requirement in accordance with that subsection.

(7) Subject to subsections (5) and (6), the person given notice shall not be taken to have complied with the disclosure requirement by the disclosure of a key unless he has disclosed every key to the protected information that is in his possession at a relevant time.

(8) Where, in a case in which a disclosure requirement in respect of any protected information is imposed on any person by a section 49 notice--

(a) that person has been in possession of the key to that information but is no longer in possession of it,

(b) if he had continued to have the key in his possession, he would have been required by virtue of the giving of the notice to disclose it, and

(c) he is in possession, at a relevant time, of information to which subsection (9) applies,

the effect of imposing that disclosure requirement on that person is that he shall be required, in accordance with the notice imposing the requirement, to disclose all such information to which subsection (9) applies as is in his possession and as he may be required, in accordance with that notice, to disclose by the person to whom he would have been required to disclose the key.

(9) This subsection applies to any information that would facilitate the obtaining or discovery of the key or the putting of the protected information into an intelligible form.

(10) In this section "relevant time", in relation to a disclosure requirement imposed by a section 49 notice, means the time of the giving of the notice or any subsequent time before the time by which the requirement falls to be complied with.

## **51 Cases in which key required**

(1) A section 49 notice imposing a disclosure requirement in respect of any protected information shall not contain a statement for the purposes of section 50(3)(c) unless--

(a) the person who for the purposes of Schedule 2 granted the permission for the giving of the notice in relation to that information, or

(b) any person whose permission for the giving of a such a notice in relation to that information would constitute the appropriate permission under that Schedule,

has given a direction that the requirement can be complied with only by the disclosure of the key itself.

(2) A direction for the purposes of subsection (1) by the police, the National Crime Agency, . . . Her Majesty's Revenue and Customs or a member of Her Majesty's forces shall not be given--

(a) in the case of a direction by the police or by a member of Her Majesty's forces who is a member of a police force, except by or with the permission of a chief officer of police;

(aa) in the case of a direction by the National Crime Agency, except by or with the permission of the Director General of the National Crime Agency;

(ab) . . .

(b) in the case of a direction by Her Majesty's Revenue and Customs, except by or with the permission of the Commissioners for Her Majesty's Revenue and Customs; or

(c) in the case of a direction by a member of Her Majesty's forces who is not a member of a police force, except by or with the permission of a person of or above the rank of brigadier or its equivalent.

(3) A permission given for the purposes of subsection (2) by a chief officer of police, Director General of the National Crime Agency, . . . the Commissioners for Her Majesty's Revenue and Customs or a person of or above any such rank as is mentioned in paragraph (c) of that subsection must be given expressly in relation to the direction in question.

(4) A person shall not give a direction for the purposes of subsection (1) unless he believes--

(a) that there are special circumstances of the case which mean that the purposes for which it was believed necessary to impose the requirement in question would be defeated, in whole or in part, if the direction were not given; and

(b) that the giving of the direction is proportionate to what is sought to be achieved by prohibiting any compliance with the requirement in question otherwise than by the disclosure of the key itself.

(5) The matters to be taken into account in considering whether the requirement of subsection (4)(b) is satisfied in the case of any direction shall include--

(a) the extent and nature of any protected information, in addition to the protected information in respect of which the disclosure requirement is imposed, to which the key is also a key; and

(b) any adverse effect that the giving of the direction might have on a business carried on by the person on whom the disclosure requirement is imposed.

(6) Where a direction for the purposes of subsection (1) is given by a chief officer of police, by the Director General of the National Crime Agency, . . . by the Commissioners for Her Majesty's Revenue and Customs or by a member of Her Majesty's forces, the person giving the direction shall give a notification that he has ~~done so--~~

~~(a) in a case where the direction is given--~~

~~(i) by a member of Her Majesty's forces who is not a member of a police force, and~~

~~(ii) otherwise than in connection with activities of members of Her Majesty's forces in Northern Ireland,~~

~~to the Intelligences Services Commissioner; and~~

~~(b) in any other case, to the Chief Surveillance Commissioner [done so to the Investigatory Powers Commissioner].~~

(7) A notification under subsection (6)--

- (a) must be given not more than seven days after the day of the giving of the direction to which it relates; and
- (b) may be given either in writing or by being transmitted to ~~the Commissioner in question~~ [the Investigatory Powers Commissioner] by electronic means.

## **52 Arrangements for payments for disclosure**

(1) It shall be the duty of the Secretary of State to ensure that such arrangements are in force as he thinks appropriate for requiring or authorising, in such cases as he thinks fit, the making to persons to whom section 49 notices are given of appropriate contributions towards the costs incurred by them in complying with such notices.

(2) For the purpose of complying with his duty under this section, the Secretary of State may make arrangements for payments to be made out of money provided by Parliament.

## **53 Failure to comply with a notice**

(1) A person to whom a section 49 notice has been given is guilty of an offence if he knowingly fails, in accordance with the notice, to make the disclosure required by virtue of the giving of the notice.

(2) In proceedings against any person for an offence under this section, if it is shown that that person was in possession of a key to any protected information at any time before the time of the giving of the section 49 notice, that person shall be taken for the purposes of those proceedings to have continued to be in possession of that key at all subsequent times, unless it is shown that the key was not in his possession after the giving of the notice and before the time by which he was required to disclose it.

(3) For the purposes of this section a person shall be taken to have shown that he was not in possession of a key to protected information at a particular time if--

- (a) sufficient evidence of that fact is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved beyond a reasonable doubt.

(4) In proceedings against any person for an offence under this section it shall be a defence for that person to show--

- (a) that it was not reasonably practicable for him to make the disclosure required by virtue of the giving of the section 49 notice before the time by which he was required, in accordance with that notice, to make it; but
- (b) that he did make that disclosure as soon after that time as it was reasonably practicable for him to do so.

(5) A person guilty of an offence under this section shall be liable--

(a) on conviction on indictment, to imprisonment for a term not exceeding the appropriate maximum term or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(5A) In subsection (5) 'the appropriate maximum term' means--

(a) in a national security case or a child indecency case, five years; and

(b) in any other case, two years.

(5B) In subsection (5A) 'a national security case' means a case in which the grounds specified in the notice to which the offence relates as the grounds for imposing a disclosure requirement were or included a belief that the imposition of the requirement was necessary in the interests of national security.

(6) In subsection (5A) "a child indecency case" means a case in which the grounds specified in the notice to which the offence relates as the grounds for imposing a disclosure requirement were or included a belief that the imposition of the requirement was necessary for the purpose of preventing or detecting an offence under any of the provisions listed in subsection (7).

(7) Those provisions are--

(a) section 1 of the Protection of Children Act 1978 (showing or taking etc an indecent photograph of a child: England and Wales);

(b) Article 3 of the Protection of Children (Northern Ireland) Order 1978 (SI 1978/1047 (NI 17)) (corresponding offence for Northern Ireland);

(c) section 52 or 52A of the Civic Government (Scotland) Act 1982 (showing or taking etc or possessing an indecent photograph of a child: Scotland);

(d) section 160 of the Criminal Justice Act 1988 (possessing an indecent photograph of a child: England and Wales);

(e) Article 15 of the Criminal Justice (Evidence, Etc) (Northern Ireland) Order 1988 (SI 1988/1847 (NI 17)) (corresponding offence for Northern Ireland).

## **54 Tipping-off**

(1) This section applies where a section 49 notice contains a provision requiring--

(a) the person to whom the notice is given, and

(b) every other person who becomes aware of it or of its contents,

to keep secret the giving of the notice, its contents and the things done in pursuance of it.

(2) A requirement to keep anything secret shall not be included in a section 49 notice except where--

- (a) it is included with the consent of the person who for the purposes of Schedule 2 granted the permission for the giving of the notice; or
  - (b) the person who gives the notice is himself a person whose permission for the giving of such a notice in relation to the information in question would have constituted appropriate permission under that Schedule.
- (3) A section 49 notice shall not contain a requirement to keep anything secret except where the protected information to which it relates--
- (a) has come into the possession of the police, the National Crime Agency, . . . Her Majesty's Revenue and Customs or any of the intelligence services, or
  - (b) is likely to come into the possession of the police, the National Crime Agency, . . . Her Majesty's Revenue and Customs or any of the intelligence services,
- by means which it is reasonable, in order to maintain the effectiveness of any investigation or operation or of investigatory techniques generally, or in the interests of the safety or well-being of any person, to keep secret from a particular person.
- (4) A person who makes a disclosure to any other person of anything that he is required by a section 49 notice to keep secret shall be guilty of an offence and liable--
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.
- (5) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that--
- (a) the disclosure was effected entirely by the operation of software designed to indicate when a key to protected information has ceased to be secure; and
  - (b) that person could not reasonably have been expected to take steps, after being given the notice or (as the case may be) becoming aware of it or of its contents, to prevent the disclosure.
- (6) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that--
- (a) the disclosure was made by or to a professional legal adviser in connection with the giving, by the adviser to any client of his, of advice about the effect of provisions of this Part; and
  - (b) the person to whom or, as the case may be, by whom it was made was the client or a representative of the client.
- (7) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was made by a legal adviser--

- (a) in contemplation of, or in connection with, any legal proceedings; and
- (b) for the purposes of those proceedings.

(8) Neither subsection (6) nor subsection (7) applies in the case of a disclosure made with a view to furthering any criminal purpose.

(9) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure made to a ~~relevant Commissioner~~ [Judicial Commissioner] or authorised--

- (a) by such a Commissioner;
- (b) by the terms of the notice;
- (c) by or on behalf of the person who gave the notice; or
- (d) by or on behalf of a person who--
  - (i) is in lawful possession of the protected information to which the notice relates; and
  - (ii) came into possession of that information as mentioned in section 49(1).

(10) In proceedings for an offence under this section against a person other than the person to whom the notice was given, it shall be a defence for the person against whom the proceedings are brought to show that he neither knew nor had reasonable grounds for suspecting that the notice contained a requirement to keep secret what was disclosed.

~~(11) — In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner or any Surveillance Commissioner or Assistant Surveillance Commissioner.~~

## **55 General duties of specified authorities**

(1) This section applies to--

- (a) the Secretary of State and every other Minister of the Crown in charge of a government department;
- (b) every chief officer of police;
- (ba) the Director General of the National Crime Agency;
- (bb) . . .
- (c) the Commissioners for Her Majesty's Revenue and Customs; and
- (d) every person whose officers or employees include persons with duties that involve the giving of section 49 notices.

(2) It shall be the duty of each of the persons to whom this section applies to ensure that such arrangements are in force, in relation to persons under his control who by virtue of this Part obtain possession of keys to protected information, as he considers necessary for securing--

(a) that a key disclosed in pursuance of a section 49 notice is used for obtaining access to, or putting into an intelligible form, only protected information in relation to which power to give such a notice was exercised or could have been exercised if the key had not already been disclosed;

(b) that the uses to which a key so disclosed is put are reasonable having regard both to the uses to which the person using the key is entitled to put any protected information to which it relates and to the other circumstances of the case;

(c) that, having regard to those matters, the use and any retention of the key are proportionate to what is sought to be achieved by its use or retention;

(d) that the requirements of subsection (3) are satisfied in relation to any key disclosed in pursuance of a section 49 notice;

(e) that, for the purpose of ensuring that those requirements are satisfied, any key so disclosed is stored, for so long as it is retained, in a secure manner;

(f) that all records of a key so disclosed (if not destroyed earlier) are destroyed as soon as the key is no longer needed for the purpose of enabling protected information to be put into an intelligible form.

(3) The requirements of this subsection are satisfied in relation to any key disclosed in pursuance of a section 49 notice if--

(a) the number of persons to whom the key is disclosed or otherwise made available, and

(b) the number of copies made of the key,

are each limited to the minimum that is necessary for the purpose of enabling protected information to be put into an intelligible form.

(3A) The power of the Director General of the National Crime Agency to delegate functions under paragraph 10 of Schedule 1 to the Crime and Courts Act 2013 does not apply in relation to the Director General's duties under this section.

(3B) . . .

(4) Subject to subsection (5), where any relevant person incurs any loss or damage in consequence of--

(a) any breach by a person to whom this section applies of the duty imposed on him by subsection (2), or

- (b) any contravention by any person whatever of arrangements made in pursuance of that subsection in relation to persons under the control of a person to whom this section applies,

the breach or contravention shall be actionable against the person to whom this section applies at the suit or instance of the relevant person.

(5) A person is a relevant person for the purposes of subsection (4) if he is--

- (a) a person who has made a disclosure in pursuance of a section 49 notice; or
- (b) a person whose protected information or key has been disclosed in pursuance of such a notice;

and loss or damage shall be taken into account for the purposes of that subsection to the extent only that it relates to the disclosure of particular protected information or a particular key which, in the case of a person falling with paragraph (b), must be his information or key.

(6) For the purposes of subsection (5)--

- (a) information belongs to a person if he has any right that would be infringed by an unauthorised disclosure of the information; and
- (b) a key belongs to a person if it is a key to information that belongs to him or he has any right that would be infringed by an unauthorised disclosure of the key.

(7) In any proceedings brought by virtue of subsection (4), it shall be the duty of the court to have regard to any opinion with respect to the matters to which the proceedings relate that is or has been given by a ~~relevant Commissioner~~ [Judicial Commissioner].

~~(8) In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.~~

## 56 Interpretation of Part III

(1) In this Part--

"chief officer of police" means any of the following--

- (a) the chief constable of a police force maintained under or by virtue of section 2 of the Police Act 1996 . . . ;
- (b) the Commissioner of Police of the Metropolis;
- (c) the Commissioner of Police for the City of London;
- (ca) the chief constable of the Police Service of Scotland;
- (d) the Chief Constable of the Police Service of Northern Ireland;

- (e) the Chief Constable of the Ministry of Defence Police;
- (f) the Provost Marshal of the Royal Navy Police;
- (g) the Provost Marshal of the Royal Military Police;
- (h) the Provost Marshal of the Royal Air Force Police;
- (i) the Chief Constable of the British Transport Police;
- (j) . . .
- (k) . . .

. . .

"electronic signature" means anything in electronic form which--

- (a) is incorporated into, or otherwise logically associated with, any electronic communication or other electronic data;
- (b) is generated by the signatory or other source of the communication or data; and
- (c) is used for the purpose of facilitating, by means of a link between the signatory or other source and the communication or data, the establishment of the authenticity of the communication or data, the establishment of its integrity, or both;

"key", in relation to any electronic data, means any key, code, password, algorithm or other data the use of which (with or without other keys)--

- (a) allows access to the electronic data, or
- (b) facilitates the putting of the data into an intelligible form;

"the police" means--

- (a) any constable (except a constable who is a National Crime Agency officer . . .);
- (b) the Commissioner of Police of the Metropolis or any Assistant Commissioner of Police of the Metropolis; or
- (c) the Commissioner of Police for the City of London;

"protected information" means any electronic data which, without the key to the data--

- (a) cannot, or cannot readily, be accessed, or
- (b) cannot, or cannot readily, be put into an intelligible form;

. . .

"section 49 notice" means a notice under section 49;

...

"warrant" includes any authorisation, notice or other instrument (however described) conferring a power of the same description as may, in other cases, be conferred by a warrant.

(2) References in this Part to a person's having information (including a key to protected information) in his possession include references--

(a) to its being in the possession of a person who is under his control so far as that information is concerned;

(b) to his having an immediate right of access to it, or an immediate right to have it transmitted or otherwise supplied to him; and

(c) to its being, or being contained in, anything which he or a person under his control is entitled, in exercise of any statutory power and without otherwise taking possession of it, to detain, inspect or search.

(3) References in this Part to something's being intelligible or being put into an intelligible form include references to its being in the condition in which it was before an encryption or similar process was applied to it or, as the case may be, to its being restored to that condition.

(4) In this section--

(a) references to the authenticity of any communication or data are references to any one or more of the following--

(i) whether the communication or data comes from a particular person or other source;

(ii) whether it is accurately timed and dated;

(iii) whether it is intended to have legal effect;

and

(b) references to the integrity of any communication or data are references to whether there has been any tampering with or other modification of the communication or data.

## **Part IV - SCRUTINY ETC. OF INVESTIGATORY POWERS AND OF THE FUNCTIONS OF THE INTELLIGENCE SERVICES**

*Sections 57 to 64, which relate to the existing oversight Commissioners, are repealed by clause 206 of the Bill (Abolition of existing oversight bodies). Sections 67 to 69 would be amended (and new section 67A inserted) by clause 208 of the Bill (Right of appeal from the Tribunal). Minor and consequential amendments are made by Schedule 10 to the Bill.*

### **~~57—Interception of Communications Commissioner~~**

~~(1) — The Prime Minister shall appoint a Commissioner to be known as the Interception of Communications Commissioner.~~

~~(2) — Subject to subsections (4) and (4A), the Interception of Communications Commissioner shall keep under review—~~

~~(a) — the exercise and performance by the Secretary of State of the powers and duties conferred or imposed on him by or under sections 1 to 11;~~

~~(aa) — the exercise and performance by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of the powers and duties conferred or imposed on them by or under sections 5, 9 and 10;~~

~~(b) — the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under Chapter II of Part I;~~

~~(c) — the exercise and performance by the Secretary of State in relation to information obtained under Part I of the powers and duties conferred or imposed on him by or under Part III; and~~

~~(d) — the adequacy of the arrangements by virtue of which—~~

~~(i) — the duty which is imposed on the Secretary of State, or the Scottish Ministers (by virtue of provision under section 63 of the Scotland Act 1998), by section 15, and~~

~~(ii) — so far as applicable to information obtained under Part I, the duties imposed by section 55,~~

~~are sought to be discharged.~~

~~(3) — The Interception of Communications Commissioner shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—~~

~~(a) — in connection with the investigation of any matter by the Tribunal; or~~

~~(b) — otherwise for the purposes of the Tribunal's consideration or determination of any matter.~~

~~(4) — It shall not be the function of the Interception of Communications Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.~~

~~(4A) — It shall not be the function of the Interception of Communications Commissioner to keep under review the exercise by the relevant judicial authority (within the meaning of section 23A) of functions under that section or section 23B.~~

~~(5) — A person shall not be appointed under this section as the Interception of Communications Commissioner unless he holds or has held a high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005) or is or has been a member of the Judicial Committee of the Privy Council.~~

~~(6) — The Interception of Communications Commissioner shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of money provided by Parliament such allowances as the Treasury may determine.~~

~~(7) — The Secretary of State, after consultation with the Interception of Communications Commissioner, shall—~~

~~(a) — make such technical facilities available to the Commissioner, and~~

~~(b) — subject to the approval of the Treasury as to numbers, provide the Commissioner with such staff,~~

~~as are sufficient to secure that the Commissioner is able properly to carry out his functions.~~

~~(8) — On the coming into force of this section the Commissioner holding office as the Commissioner under section 8 of the Interception of Communications Act 1985 shall take and hold office as the Interception of Communications Commissioner as if appointed under this Act—~~

~~(a) — for the unexpired period of his term of office under that Act; and~~

~~(b) — otherwise, on the terms of his appointment under that Act.~~

## **~~58 Co-operation with and reports by s 57 Commissioner~~**

~~(1) — It shall be the duty of—~~

~~(a) — every person holding office under the Crown,~~

~~(b) — . . .~~

~~(ba) — . . .~~

~~(d) — every person employed by or for the purposes of a police force,~~

~~(e) — every person required for the purposes of section 11 to provide assistance with giving effect to an interception warrant,~~

~~(f) — every person on whom an obligation to take any steps has been imposed under section 12,~~

~~(g) — every person by or to whom an authorisation under section 22(3) or (3B) has been granted,~~

~~(h) — every person to whom a notice under section 22(4) has been given,~~

~~(i) — every person to whom a notice under section 49 has been given in relation to any information obtained under Part I, and~~

~~(j) — every person who is or has been employed for the purposes of any business of a person falling within paragraph (e), (f), (h) or (i),~~

~~to disclose or provide to the Interception of Communications Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions under section 57.~~

~~(2) — If it at any time appears to the Interception of Communications Commissioner—~~

~~(a) — that there has been a contravention of the provisions of this Act in relation to any matter with which that Commissioner is concerned, and~~

~~(b) — that the contravention has not been the subject of a report made to the Prime Minister by the Tribunal,~~

~~he shall make a report to the Prime Minister with respect to that contravention.~~

~~(3) — If it at any time appears to the Interception of Communications Commissioner that any arrangements by reference to which the duties imposed by sections 15 and 55 have sought to be discharged have proved inadequate in relation to any matter with which the Commissioner is concerned, he shall make a report to the Prime Minister with respect to those arrangements.~~

~~(4) — As soon as practicable after the end of each calendar year and after the end of the period of six months beginning with the end of each calendar year, the Interception of Communications Commissioner shall make a report to the Prime Minister with respect to the carrying out of that Commissioner's functions.~~

~~(5) — The Interception of Communications Commissioner may also, at any time, make any such other report to the Prime Minister on any matter relating to the carrying out of the Commissioner's functions as the Commissioner thinks fit.~~

~~(5A) — The Interception of Communications Commissioner may also, at any time, make any such other report to the First Minister on any matter relating to the carrying out of the Commissioner's functions so far as they relate to the exercise by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of their powers under sections 5, 9(1)(b) and (3), 10(1)(a) and (2) and 15(1) of this Act, as the Commissioner thinks fit.~~

~~(6) — The Prime Minister shall lay before each House of Parliament a copy of every annual report, and every half-yearly report, made by the Interception of Communications Commissioner under subsection (4), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7).~~

~~(6A) — The Prime Minister shall send a copy of every annual report, and every half-yearly report, made by the Interception of Communications Commissioner under subsection (4) which he lays in terms of subsection (6), together with a copy of the statement referred to in subsection (6), to the First Minister who shall forthwith lay that copy report and statement before the Scottish Parliament.~~

~~(7) — If it appears to the Prime Minister, after consultation with the Interception of Communications Commissioner and, if it appears relevant to do so, with the First Minister, that the publication of any matter in an annual report, or half-yearly report, would be contrary to the public interest or prejudicial to—~~

- ~~(a) — national security;~~
- ~~(b) — the prevention or detection of serious crime;~~
- ~~(c) — the economic well-being of the United Kingdom; or~~
- ~~(d) — the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner;~~

~~the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.~~

### **~~59 Intelligence Services Commissioner~~**

~~(1) — The Prime Minister shall appoint a Commissioner to be known as the Intelligence Services Commissioner.~~

~~(2) — Subject to subsection (4), the Intelligence Services Commissioner shall keep under review, so far as they are not required to be kept under review by the Interception of Communications Commissioner—~~

~~(a) — the exercise by the Secretary of State of his powers under sections 5 to 7 of, or the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of their powers under sections 5 and 6(3) and (4) of, the Intelligence Services Act 1994 (warrants for interference with wireless telegraphy, entry and interference with property etc);~~

~~(b) — the exercise and performance by the Secretary of State, or the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998), in connection with or in relation to—~~

~~(i) — the activities of the intelligence services; and~~

~~(ii) — the activities in places other than Northern Ireland of the officials of the Ministry of Defence and of members of Her Majesty's forces;~~

~~of the powers and duties conferred or imposed on him by Parts II and III of this Act or on them by Part II of this Act;~~

~~(c) — the exercise and performance by members of the intelligence services of the powers and duties conferred or imposed on them by or under Parts II and III of this Act;~~

~~(d) — the exercise and performance in places other than Northern Ireland, by officials of the Ministry of Defence and by members of Her Majesty's forces, of the powers and duties conferred or imposed on such officials or members of Her Majesty's forces by or under Parts II and III; and~~

~~(e) — the adequacy of the arrangements by virtue of which the duty imposed by section 55 is sought to be discharged—~~

~~(i) — in relation to the members of the intelligence services; and~~

~~(ii) — in connection with any of their activities in places other than Northern Ireland, in relation to officials of the Ministry of Defence and members of Her Majesty's forces.~~

~~(2A) — ...~~

~~(3) — The Intelligence Services Commissioner shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—~~

~~(a) — in connection with the investigation of any matter by the Tribunal; or~~

~~(b) — otherwise for the purposes of the Tribunal's consideration or determination of any matter.~~

~~(4) — It shall not be the function of the Intelligence Services Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.~~

~~(5) — A person shall not be appointed under this section as the Intelligence Services Commissioner unless he holds or has held a high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005) or is or has been a member of the Judicial Committee of the Privy Council.~~

~~(6) — The Intelligence Services Commissioner shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of money provided by Parliament such allowances as the Treasury may determine.~~

~~(7) — The Secretary of State shall, after consultation with the Intelligence Services Commissioner and subject to the approval of the Treasury as to numbers, provide him with such staff as the Secretary of State considers necessary for the carrying out of the Commissioner's functions.~~

~~(8) — Section 4 of the Security Service Act 1989 and section 8 of the Intelligence Services Act 1994 (Commissioners for the purposes of those Acts) shall cease to have effect.~~

~~(9) — On the coming into force of this section the Commissioner holding office as the Commissioner under section 8 of the Intelligence Services Act 1994 shall take and hold office as the Intelligence Services Commissioner as if appointed under this Act—~~

~~(a) — for the unexpired period of his term of office under that Act; and~~

~~(b) — otherwise, on the terms of his appointment under that Act.~~

~~(10) — Subsection (7) of section 41 shall apply for the purposes of this section as it applies for the purposes of that section.~~

### **59A Additional functions of the Intelligence Services Commissioner**

~~(1) — So far as directed to do so by the Prime Minister and subject to subsection (2), the Intelligence Services Commissioner must keep under review the carrying out of any aspect of the functions of—~~

- ~~(a) — an intelligence service,~~
- ~~(b) — a head of an intelligence service, or~~
- ~~(c) — any part of Her Majesty's forces, or of the Ministry of Defence, so far as engaging in intelligence activities.~~

~~(2) — Subsection (1) does not apply in relation to anything which is required to be kept under review by the Interception of Communications Commissioner or under section 59.~~

~~(3) — The Prime Minister may give a direction under this section at the request of the Intelligence Services Commissioner or otherwise.~~

~~(4) — Directions under this section may, for example, include directions to the Intelligence Services Commissioner to keep under review the implementation or effectiveness of particular policies of the head of an intelligence service regarding the carrying out of any of the functions of the intelligence service.~~

~~(5) — The Prime Minister must publish, in a manner which the Prime Minister considers appropriate, any direction under this section (and any revocation of such a direction) except so far as it appears to the Prime Minister that such publication would be contrary to the public interest or prejudicial to—~~

- ~~(a) — national security,~~
- ~~(b) — the prevention or detection of serious crime,~~
- ~~(c) — the economic well-being of the United Kingdom, or~~
- ~~(d) — the continued discharge of the functions of any public authority whose activities include activities that are subject to review by the Intelligence Services Commissioner.~~

~~(6) — In this section "head", in relation to an intelligence service, means—~~

- ~~(a) — in relation to the Security Service, the Director-General,~~
- ~~(b) — in relation to the Secret Intelligence Service, the Chief, and~~
- ~~(c) — in relation to GCHQ, the Director.~~

## **60 Co-operation with and reports by s 59 Commissioner**

~~(1) — It shall be the duty of—~~

- ~~(a) — every member of an intelligence service,~~
- ~~(b) — every official of the department of the Secretary of State and every member of staff of the Scottish Administration (by virtue of provision under section 63 of the Scotland Act 1998), and~~
- ~~(c) — every member of Her Majesty's forces,~~

~~to disclose or provide to the Intelligence Services Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions under sections 59 and 59A.~~

~~(2) — As soon as practicable after the end of each calendar year, the Intelligence Services Commissioner shall make a report to the Prime Minister with respect to the carrying out of that Commissioner's functions.~~

~~(3) — The Intelligence Services Commissioner may also, at any time, make any such other report to the Prime Minister on any matter relating to the carrying out of the Commissioner's functions as the Commissioner thinks fit.~~

~~(3A) — The Intelligence Services Commissioner may also, at any time, make any such other report to the First Minister on any matter relating to the carrying out of the Commissioner's functions so far as they relate to the exercise by the Scottish Ministers (by virtue of provision made under section 63 of the Scotland Act 1998) of their powers under sections 5 and 6(3) and (4) of the Intelligence Services Act 1994 or under Parts I and II of this Act, as the Commissioner thinks fit.~~

~~(4) — The Prime Minister shall lay before each House of Parliament a copy of every annual report made by the Intelligence Services Commissioner under subsection (2), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (5).~~

~~(4A) — The Prime Minister shall send a copy of every annual report made by the Intelligence Services Commissioner under subsection (2) which he lays in terms of subsection (4), together with a copy of the statement referred to in subsection (4), to the First Minister who shall forthwith lay that copy report and statement before the Scottish Parliament.~~

~~(5) — If it appears to the Prime Minister, after consultation with the Intelligence Services Commissioner and, if it appears relevant to do so, with the First Minister, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—~~

~~(a) — national security,~~

~~(b) — the prevention or detection of serious crime,~~

~~(c) — the economic well-being of the United Kingdom, or~~

~~(d) — the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,~~

~~the Prime Minister may exclude that matter from the copy of the report as laid before each House of Parliament.~~

~~(6) — Subsection (7) of section 41 shall apply for the purposes of this section as it applies for the purposes of that section.~~

## **~~61 Investigatory Powers Commissioner for Northern Ireland~~**

~~(1) — The Prime Minister, after consultation with the First Minister and deputy First Minister in Northern Ireland, shall appoint a Commissioner to be known as the Investigatory Powers Commissioner for Northern Ireland.~~

~~(2) — The Investigatory Powers Commissioner for Northern Ireland shall keep under review the exercise and performance in Northern Ireland, by the persons on whom they are conferred or imposed, of any powers or duties under Part II which are conferred or imposed by virtue of an order under section 30 made by the Office of the First Minister and deputy First Minister in Northern Ireland.~~

~~(3) — The Investigatory Powers Commissioner for Northern Ireland shall give the Tribunal all such assistance (including his opinion as to any issue falling to be determined by the Tribunal) as the Tribunal may require—~~

~~(a) — in connection with the investigation of any matter by the Tribunal; or~~

~~(b) — otherwise for the purposes of the Tribunal's consideration or determination of any matter.~~

~~(4) — It shall be the duty of—~~

~~(a) — every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Investigatory Powers Commissioner for Northern Ireland;~~

~~(b) — every person who has engaged in conduct with the authority of such an authorisation;~~

~~(c) — every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a); and~~

~~(d) — every person who holds or has held any office, rank or position with any public authority for whose benefit (within the meaning of Part II) activities which are or may be subject to any such review have been or may be carried out;~~

~~to disclose or provide to that Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.~~

~~(5) — As soon as practicable after the end of each calendar year, the Investigatory Powers Commissioner for Northern Ireland shall make a report to the First Minister and deputy First Minister in Northern Ireland with respect to the carrying out of that Commissioner's functions.~~

~~(6) — The First Minister and deputy First Minister in Northern Ireland shall lay before the Northern Ireland Assembly a copy of every annual report made by the Investigatory Powers Commissioner for Northern Ireland under subsection (5), together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (7).~~

~~(7) — If it appears to the First Minister and deputy First Minister in Northern Ireland, after consultation with the Investigatory Powers Commissioner for Northern Ireland, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to—~~

~~(a) — the prevention or detection of serious crime, or~~

~~(b) — the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,~~

~~they may exclude that matter from the copy of the report as laid before the Northern Ireland Assembly.~~

~~(8) — A person shall not be appointed under this section as the Investigatory Powers Commissioner for Northern Ireland unless he holds or has held office in Northern Ireland—~~

~~(a) — in any capacity in which he is or was the holder of a high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005); or~~

~~(b) — as a county court judge.~~

~~(9) — The Investigatory Powers Commissioner for Northern Ireland shall hold office in accordance with the terms of his appointment; and there shall be paid to him out of the Consolidated Fund of Northern Ireland such allowances as the Department of Finance and Personnel may determine.~~

~~(10) — The First Minister and deputy First Minister in Northern Ireland shall, after consultation with the Investigatory Powers Commissioner for Northern Ireland, provide him with such staff as they consider necessary for the carrying out of his functions.~~

## **62 Additional functions of Chief Surveillance Commissioner**

~~(1) — The Chief Surveillance Commissioner shall (in addition to his functions under the Police Act 1997) keep under review, so far as they are not required to be kept under review by the Interception of Communications Commissioner, the Intelligence Services Commissioner or the Investigatory Powers Commissioner for Northern Ireland—~~

~~(a) — the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under Part II;~~

~~(b) — the exercise and performance, by any person other than a judicial authority, of the powers and duties conferred or imposed, otherwise than with the permission of such an authority, by or under Part III; and~~

~~(c) — the adequacy of the arrangements by virtue of which the duties imposed by section 55 are sought to be discharged in relation to persons whose conduct is subject to review under paragraph (b).~~

~~(2) — It shall not by virtue of this section be the function of the Chief Surveillance Commissioner to keep under review the exercise of any power of the Secretary of State to make, amend or revoke any subordinate legislation.~~

~~(2A) — It shall not by virtue of this section be the function of the Chief Surveillance Commissioner to keep under review the exercise by a judicial authority of functions under section 32A or 32B.~~

~~(3) — In this section "judicial authority" means—~~

~~(a) — any judge of the High Court or of the Crown Court or any Circuit Judge;~~

~~(b) — any judge of the High Court of Justiciary or any sheriff;~~

~~(c) — any justice of the peace;~~

~~(d) — any county court judge or resident magistrate in Northern Ireland;~~

~~(e) — any person holding any such judicial office as entitles him to exercise the jurisdiction of a judge of the Crown Court or of a justice of the peace.~~

### ~~63 Assistant Surveillance Commissioners~~

~~(1) — The Prime Minister may, after consultation with the Chief Surveillance Commissioner as to numbers, appoint as Assistant Surveillance Commissioners such number of persons as the Prime Minister considers necessary (in addition to the ordinary Surveillance Commissioners) for the purpose of providing the Chief Surveillance Commissioner with assistance under this section.~~

~~(2) — A person shall not be appointed as an Assistant Surveillance Commissioner unless he holds or has held office as—~~

~~(a) — a judge of the Crown Court or a Circuit judge;~~

~~(b) — a sheriff in Scotland; or~~

~~(c) — a county court judge in Northern Ireland.~~

~~(3) — The Chief Surveillance Commissioner may—~~

~~(a) — require any ordinary Surveillance Commissioner or any Assistant Surveillance Commissioner to provide him with assistance in carrying out his functions under section 62(1); or~~

~~(b) — require any Assistant Surveillance Commissioner to provide him with assistance in carrying out his equivalent functions under any Act of the Scottish Parliament in relation to any provisions of such an Act that are equivalent to those of Part II of this Act.~~

~~(4) — The assistance that may be provided under this section includes—~~

~~(a) — the conduct on behalf of the Chief Surveillance Commissioner of the review of any matter; and~~

~~(b) — the making of a report to the Chief Surveillance Commissioner about the matter reviewed.~~

~~(5) — Subsections (3) to (8) of section 91 of the Police Act 1997 (Commissioners) apply in relation to a person appointed under this section as they apply in relation to a person appointed under that section.~~

#### ~~64 Delegation of Commissioners' functions~~

~~(1) — Anything authorised or required by or under any enactment or any provision of an Act of the Scottish Parliament to be done by a relevant Commissioner may be done by any member of the staff of that Commissioner who is authorised for the purpose (whether generally or specifically) by that Commissioner.~~

~~(2) — In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner.~~

#### **65 The Tribunal**

(1) There shall, for the purpose of exercising the jurisdiction conferred on them by this section, be a tribunal consisting of such number of members as Her Majesty may by Letters Patent appoint.

(2) The jurisdiction of the Tribunal shall be--

(a) to be the only appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998 in relation to any proceedings under subsection (1)(a) of that section (proceedings for actions incompatible with Convention rights) which fall within subsection (3) of this section;

(b) to consider and determine any complaints made to them which, in accordance with subsection (4) . . . , are complaints for which the Tribunal is the appropriate forum;

(c) to consider and determine any reference to them by any person that he has suffered detriment as a consequence of any prohibition or restriction, by virtue of ~~section 17~~ [section 48 of the Investigatory Powers Act 2016], on his relying in, or for the purposes of, any civil proceedings on any matter; and

(d) to hear and determine any other such proceedings falling within subsection (3) as may be allocated to them in accordance with provision made by the Secretary of State by order.

(3) Proceedings fall within this subsection if--

- (a) they are proceedings against any of the intelligence services;
  - (b) they are proceedings against any other person in respect of any conduct, or proposed conduct, by or on behalf of any of those services;
  - (c) they are proceedings brought by virtue of section 55(4); or
    - (ca) . . .
    - (cb) . . .
  - (d) they are proceedings relating to the taking place in any challengeable circumstances of any conduct falling within subsection (5).
- (4) The Tribunal is the appropriate forum for any complaint if it is a complaint by a person who is aggrieved by any conduct falling within subsection (5) which he believes--
- (a) to have taken place in relation to him, to any of his property, to any communications sent by or to him, or intended for him, or to his use of any postal service, telecommunications service or telecommunication system; and
  - (b) to have taken place in challengeable circumstances or to have been carried out by or on behalf of any of the intelligence services.
- (4A) . . .
- (5) Subject to subsection (6), conduct falls within this subsection if (whenever it occurred) it is--
- (a) conduct by or on behalf of any of the intelligence services;
  - (b) conduct for or in connection with the interception of communications in the course of their transmission by means of a postal service or telecommunication system;
  - ~~[(ba) conduct for or in connection with the obtaining of secondary data from communications transmitted by means of such a service or system;]~~
  - ~~(c) conduct to which Chapter II of Part I applies;~~
  - ~~[(c) conduct of a kind which may be permitted or required by an authorisation or notice under Part 3 of the Investigatory Powers Act 2016 or a warrant under Chapter 2 of Part 6 of that Act (acquisition of communications data);~~
  - ~~(cza) the giving or varying of an authorisation or notice under Part 3 of that Act or of a warrant under Chapter 2 of Part 6 of that Act;~~
  - ~~(czb) conduct of a kind which may be required or permitted by a retention notice under Part 4 of that Act (retention of communications data) but excluding any conduct which is subject to review by the Information Commissioner;~~
  - ~~(czc) the giving or varying of a retention notice under that Part of that Act;]~~
  - (ca) the carrying out of surveillance by a foreign police or customs officer (within the meaning of section 76A);

- (d) other conduct to which Part II applies;
- (e) the giving of a notice under section 49 or any disclosure or use of a key to protected information;
- (f) any entry on or interference with property or any interference with wireless telegraphy.

(6) For the purposes only of subsection (3), nothing mentioned in paragraph (d) or (f) of subsection (5) shall be treated as falling within that subsection unless it is conduct by or on behalf of a person holding any office, rank or position with--

- (a) any of the intelligence services;
- (b) any of Her Majesty's forces;
- (c) any police force;
- (ca) the Police Investigations and Review Commissioner;
- (d) the National Crime Agency;
- (da) . . . or
- (f) the Commissioners for Her Majesty's Revenue and Customs;

and section 48(5) applies for the purposes of this subsection as it applies for the purposes of Part II.

(7) For the purposes of this section conduct takes place in challengeable circumstances if--

- (a) it takes place with the authority, or purported authority, of anything falling within subsection (8); or
- (b) the circumstances are such that (whether or not there is such authority) it would not have been appropriate for the conduct to take place without it, or at least without proper consideration having been given to whether such authority should be sought;

but, subject to subsection (7ZA), conduct does not take place in challengeable circumstances to the extent that it is authorised by, or takes place with the permission of, a judicial authority.

(7ZA) The exception in subsection (7) so far as conduct is authorised by, or takes place with the permission of, a judicial authority does not include conduct authorised by an approval given ~~under section 23A or 32A~~ [by a Judicial Commissioner or under section 32A of this Act or section 66 of the Investigatory Powers Act 2016].

[(7ZB) For the purposes of this section conduct also takes place in challengeable circumstances if it is, or purports to be, conduct falling within subsection (5)(cza) or (czc).]

(7A) For the purposes of this section conduct also takes place in challengeable circumstances if it takes place, or purports to take place, under section 76A.

(8) The following fall within this subsection--

~~(a) an interception warrant or a warrant under the Interception of Communications Act 1985;~~

~~(b) an authorisation or notice under Chapter II of Part I of this Act;~~

[(a) a warrant under Part 2, 5, 6 or 7 of the Investigatory Powers Act 2016;

(b) an authorisation or notice under Part 3 of that Act;

(ba) a retention notice under Part 4 of that Act.]

(c) an authorisation under Part II of this Act or under any enactment contained in or made under an Act of the Scottish Parliament which makes provision equivalent to that made by that Part;

(d) a permission for the purposes of Schedule 2 to this Act;

(e) a notice under section 49 of this Act; or

(f) an authorisation under section 93 of the Police Act 1997.

(9) Schedule 3 (which makes further provision in relation to the Tribunal) shall have effect.

[(9A) In subsection (5)(ba) the reference to obtaining secondary data from communications transmitted by means of a postal service or telecommunication system is to be read in accordance with section 14 of the Investigatory Powers Act 2016.]

(10) In this section--

(a) references to a key and to protected information shall be construed in accordance with section 56;

(b) references to the disclosure or use of a key to protected information taking place in relation to a person are references to such a disclosure or use taking place in a case in which that person has had possession of the key or of the protected information; and

(c) references to the disclosure of a key to protected information include references to the making of any disclosure in an intelligible form (within the meaning of section 56) of protected information by a person who is or has been in possession of the key to that information;

and the reference in paragraph (b) to a person's having possession of a key or of protected information shall be construed in accordance with section 56.

(11) In this section "judicial authority" means--

(a) any judge of the High Court or of the Crown Court or any Circuit Judge;

(b) any judge of the High Court of Justiciary or any sheriff;

(c) any justice of the peace;

- (d) any county court judge or resident magistrate in Northern Ireland;
- (e) any person holding any such judicial office as entitles him to exercise the jurisdiction of a judge of the Crown Court or of a justice of the peace.

## **66 Orders allocating proceedings to the Tribunal**

- (1) An order under section 65(2)(d) allocating proceedings to the Tribunal--
  - (a) may provide for the Tribunal to exercise jurisdiction in relation to that matter to the exclusion of the jurisdiction of any court or tribunal; but
  - (b) if it does so provide, must contain provision conferring a power on the Tribunal, in the circumstances provided for in the order, to remit the proceedings to the court or tribunal which would have had jurisdiction apart from the order.
- (2) In making any provision by an order under section 65(2)(d) the Secretary of State shall have regard, in particular, to--
  - (a) the need to secure that proceedings allocated to the Tribunal are properly heard and considered; and
  - (b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services.
- (3) The Secretary of State shall not make an order under section 65(2)(d) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

## **67 Exercise of the Tribunal's jurisdiction**

- (1) Subject to subsections (4) and (5), it shall be the duty of the Tribunal--
  - (a) to hear and determine any proceedings brought before them by virtue of section 65(2)(a) or (d); and
  - (b) to consider and determine any complaint or reference made to them by virtue of section 65(2)(b) or (c).
- (2) Where the Tribunal hear any proceedings by virtue of section 65(2)(a), they shall apply the same principles for making their determination in those proceedings as would be applied by a court on an application for judicial review.
- (3) Where the Tribunal consider a complaint made to them by virtue of section 65(2)(b), it shall be the duty of the Tribunal--
  - (a) to investigate whether the persons against whom any allegations are made in the complaint have engaged in relation to--

- (i) the complainant,
- (ii) any of his property,
- (iii) any communications sent by or to him, or intended for him, or
- (iv) his use of any postal service, telecommunications service or telecommunication system,

in any conduct falling within section 65(5);

(b) to investigate the authority (if any) for any conduct falling within section 65(5) which they find has been so engaged in; and

(c) in relation to the Tribunal's findings from their investigations, to determine the complaint by applying the same principles as would be applied by a court on an application for judicial review.

(4) The Tribunal shall not be under any duty to hear, consider or determine any proceedings, complaint or reference if it appears to them that the bringing of the proceedings or the making of the complaint or reference is frivolous or vexatious.

(5) Except where the Tribunal, having regard to all the circumstances, are satisfied that it is equitable to do so, they shall not consider or determine any complaint made by virtue of section 65(2)(b) if it is made more than one year after the taking place of the conduct to which it relates.

(6) Subject to any provision made by rules under section 69, where any proceedings have been brought before the Tribunal or any reference made to the Tribunal, they shall have power to make such interim orders, pending their final determination, as they think fit.

(7) Subject to any provision made by rules under section 69, the Tribunal on determining any proceedings, complaint or reference shall have power to make any such award of compensation or other order as they think fit; and, without prejudice to the power to make rules under section 69(2)(h), the other orders that may be made by the Tribunal include--

(a) an order quashing or cancelling any warrant or authorisation;

[(aza) an order quashing or cancelling a notice under Part 3 of the Investigatory Powers Act 2016 or a retention notice under Part 4 of that Act;]

(aa) an order quashing an order under section ~~23A or 32A~~ [section 66 of the Investigatory Powers Act 2016 or section 32A of this Act] by the relevant judicial authority (within the meaning of that section); and

(b) an order requiring the destruction of any records of information which--

(i) has been obtained in exercise of any power conferred by a warrant or authorisation [or a notice under Part 3 of the Investigatory Powers Act 2016]; or

(ii) is held by any public authority in relation to any person.

~~(8) Except to such extent as the Secretary of State may by order otherwise provide [Except as provided by virtue of section 67A], determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether they have jurisdiction) shall not be subject to appeal or be liable to be questioned in any court.~~

~~(9) It shall be the duty of the Secretary of State to secure that there is at all times an order under subsection (8) in force allowing for an appeal to a court against any exercise by the Tribunal of their jurisdiction under section 65(2)(c) or (d).~~

~~(10) The provision that may be contained in an order under subsection (8) may include—~~

~~(a) provision for the establishment and membership of a tribunal or body to hear appeals;~~

~~(b) the appointment of persons to that tribunal or body and provision about the remuneration and allowances to be payable to such persons and the expenses of the tribunal;~~

~~(c) the conferring of jurisdiction to hear appeals on any existing court or tribunal; and~~

~~(d) any such provision in relation to an appeal under the order as corresponds to provision that may be made by rules under section 69 in relation to proceedings before the Tribunal, or to complaints or references made to the Tribunal.~~

~~(11) The Secretary of State shall not make an order under subsection (8) unless a draft of the order has been laid before Parliament and approved by a resolution of each House.~~

~~(12) The Secretary of State shall consult the Scottish Ministers before making any order under subsection (8); and any such order shall be laid before the Scottish Parliament.~~

### **[67A Appeals from the Tribunal**

(1) A relevant person may appeal on a point of law against any determination of the Tribunal of a kind mentioned in section 68(4) or any decision of the Tribunal of a kind mentioned in 68(4)(c).

(2) Before making a determination or decision which might be the subject of an appeal under this section, the Tribunal must specify the court which is to have jurisdiction to hear the appeal (the “relevant appellate court”).

(3) This court is whichever of the following courts appears to the Tribunal to be the most appropriate—

(a) the Court of Appeal in England and Wales,

(b) the Court of Session,

(c) the Court of Appeal in Northern Ireland.

(4) The Secretary of State may by regulations specify criteria to be applied by the Tribunal in making decisions under subsection (2) as to the identity of the relevant appellate court.

(5) An appeal under this section—

(a) is to be heard by the relevant appellate court, but

(b) may not be made without the leave of the Tribunal or, if that is refused, of the relevant appellate court.

(6) The Tribunal or relevant appellate court must not grant leave to appeal unless it considers that—

(a) the appeal would raise an important point of principle or practice, or

(b) there is another compelling reason for granting leave.

(7) In this section—

“relevant appellate court” has the meaning given by subsection (2),

“relevant person”, in relation to any proceedings, complaint or reference, means the complainant or—

(a) in the case of proceedings, the respondent,

(b) in the case of a complaint, the person complained against, and

(c) in the case of a reference, any public authority to whom the reference relates.]

## **68 Tribunal procedure**

(1) Subject to any rules made under section 69, the Tribunal shall be entitled to determine their own procedure in relation to any proceedings, complaint or reference brought before or made to them.

(2) The Tribunal shall have power--

(a) in connection with the investigation of any matter, or

(b) otherwise for the purposes of the Tribunal's consideration or determination of any matter,

to require a relevant Commissioner appearing to the Tribunal to have functions in relation to the matter in question to provide the Tribunal with all such assistance (including that Commissioner's opinion as to any issue falling to be determined by the Tribunal) as the Tribunal think fit.

(3) Where the Tribunal hear or consider any proceedings, complaint or reference relating to any matter, they shall secure that every relevant Commissioner appearing to them to have functions in relation to that matter--

(a) is aware that the matter is the subject of proceedings, a complaint or a reference brought before or made to the Tribunal; and

(b) is kept informed of any determination, award, order or other decision made by the Tribunal with respect to that matter.

(4) Where the Tribunal determine any proceedings, complaint or reference brought before or made to them, they shall give notice to the complainant which (subject to any rules made by virtue of section 69(2)(i)) shall be confined, as the case may be, to either--

- (a) a statement that they have made a determination in his favour; or
- (b) a statement that no determination has been made in his favour.

[(4A) Where the Tribunal make any determination of a kind mentioned in subsection 4, they must also give notice to--

- (a) in the case of proceedings, the respondent;
- (b) in the case of a complaint, the person complained against; and
- (c) in the case of a reference, any public authority to whom the reference relates.

(4B) Where the Tribunal make any decision which--

- (a) is a final decision of a preliminary issue in relation to any proceedings, complaint or reference brought before or made to them, and
- (b) is neither a determination of a kind mentioned in subsection (4) nor a decision relating to a procedural matter,

they must give notice of that decision to every person who would be entitled to receive notice of the determination under subsection (4) or (4A).

(4C) Where the Tribunal make any determination of a kind mentioned in subsection 4, they must also give notice to--

- (a) in the case of proceedings, the respondent;
- (b) in the case of a complaint, the person complained against; and
- (c) in the case of a reference, any public authority to whom the reference relates.

(4D) A notice under subsection (4C) is (subject to any rules made by virtue of section 69(2)(i) or (j)) to be confined to a statement as to what the decision is.

(4E) Subsections (4C) and (4D) do not apply so far as—

- (a) the Tribunal are prevented from giving notice of a decision to a person by rules made by virtue of section 69(4) or decide under such rules not to give such a notice, or
- (b) the giving of such a notice is inconsistent with such rules.]

(5) Where--

(a) the Tribunal make a determination in favour of any person by whom any proceedings have been brought before the Tribunal or by whom any complaint or reference has been made to the Tribunal, and

(b) the determination relates to any act or omission by or on behalf of the Secretary of State or to conduct for which any warrant, authorisation or permission[, or notice under Part 4 of the Investigatory Powers Act 2016] was issued, granted or given by the Secretary of State,

they shall make a report of their findings to the Prime Minister.

(6) It shall be the duty of the persons specified in subsection (7) to disclose or provide to the Tribunal all such documents and information as the Tribunal may require for the purpose of enabling them--

(a) to exercise the jurisdiction conferred on them by or under section 65; or

(b) otherwise to exercise or perform any power or duty conferred or imposed on them by or under this Act [or the Investigatory Powers Act 2016].

(7) Those persons are--

(a) every person holding office under the Crown;

(b) . . .

(ba) . . .

(d) every person employed by or for the purposes of a police force;

(da) the Police Investigations and Review Commissioner and every member of the Commissioner's staff;

(e) every person required for the purposes of ~~section 14~~ [section 34, 109, 131, 147 or 167 of the Investigatory Powers Act 2016] to provide assistance with giving effect to an ~~interception warrant~~ [a warrant];

(f) every person on whom an obligation to take any steps has been imposed under ~~section 12~~ [ section 217 of that Act];

~~(g) every person by or to whom an authorisation under section 22(3) or (3B) has been granted;~~

~~(h) every person to whom a notice under section 22(4) has been given;~~

~~[(g) every person by or to whom an authorisation under Part 3 of that Act has been granted;~~

~~(h) every person to whom a notice under Part 3 of that Act has been given;~~

~~(ha) every person to whom a retention notice under Part 4 of that Act has been given;]~~

- (i) every person by whom, or on whose application, there has been granted or given any authorisation under Part II of this Act or under Part III of the Police Act 1997;
- (j) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (i);
- (k) every person who has engaged in any conduct with the authority of ~~an authorisation under section 22 or Part II of this Act or under Part III of the Police Act 1997~~ [-
  - (i) an authorisation under Part 3 of the Investigatory Powers Act 2016, Part 2 of this Act or Part 3 of the Police Act 1997, or
  - (ii) a warrant under Chapter 2 of Part 6 of the Investigatory Powers Act 2016;]
- (l) every person who holds or has held any office, rank or position with a public authority for whose benefit any such authorisation ~~[or warrant]~~ has been or may be given;
- (m) every person to whom a notice under section 49 has been given; and
- (n) every person who is or has been employed for the purposes of any business of a person falling within paragraph (e), (f), (h) ~~[(ha)]~~ or (m).

(8) In this section "relevant Commissioner" means the ~~Interception of Communications Commissioner, the Intelligence Services Commissioner, the Investigatory Powers Commissioner for Northern Ireland or any Surveillance Commissioner or Assistant Surveillance Commissioner~~ [Investigatory Powers Commissioner or any other Judicial Commissioner].

## 69 Tribunal rules

- (1) The Secretary of State may make rules regulating--
  - (a) the exercise by the Tribunal of the jurisdiction conferred on them by or under section 65; and
  - (b) any matters preliminary or incidental to, or arising out of, the hearing or consideration of any proceedings, complaint or reference brought before or made to the Tribunal.
- (2) Without prejudice to the generality of subsection (1), rules under this section may--
  - (a) enable the jurisdiction of the Tribunal to be exercised at any place in the United Kingdom by any two or more members of the Tribunal designated for the purpose by the President of the Tribunal;
  - (b) enable different members of the Tribunal to carry out functions in relation to different complaints at the same time;

(c) prescribe the form and manner in which proceedings are to be brought before the Tribunal or a complaint or reference is to be made to the Tribunal;

(d) require persons bringing proceedings or making complaints or references to take such preliminary steps, and to make such disclosures, as may be specified in the rules for the purpose of facilitating a determination of whether--

- (i) the bringing of the proceedings, or
- (ii) the making of the complaint or reference,

is frivolous or vexatious;

(e) make provision about the determination of any question as to whether a person by whom--

- (i) any proceedings have been brought before the Tribunal, or
- (ii) any complaint or reference has been made to the Tribunal,

is a person with a right to bring those proceedings or make that complaint or reference;

(f) prescribe the forms of hearing or consideration to be adopted by the Tribunal in relation to particular proceedings, complaints or references (including a form that requires any proceedings brought before the Tribunal to be disposed of as if they were a complaint or reference made to the Tribunal);

(g) prescribe the practice and procedure to be followed on, or in connection with, the hearing or consideration of any proceedings, complaint or reference (including, where applicable, the mode and burden of proof and the admissibility of evidence);

(h) prescribe orders that may be made by the Tribunal under section 67(6) or (7);

(i) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings, complaint or reference to be provided (in addition to any statement under section 68(4)) [or notice under section 68(4C)] to the person who brought the proceedings or made the complaint or reference, or to the person representing his interests.

[(i) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings, complaint or reference to be provided (in addition to any statement under section 68(4A) or notice under section 68(4C)) to—

- (i) in the case of proceedings, the respondent,
- (ii) in the case of a complaint, the person complained against, and
- (iii) in the case of a reference, any public authority to whom the reference relates, or to the person representing their interests.

(k) make provision about the making and determination of applications to the Tribunal for permission to appeal.]

(3) Rules under this section in relation to the hearing or consideration of any matter by the Tribunal may provide--

(a) for a person who has brought any proceedings before or made any complaint or reference to the Tribunal to have the right to be legally represented;

(b) for the manner in which the interests of a person who has brought any proceedings before or made any complaint or reference to the Tribunal are otherwise to be represented;

(c) for the appointment in accordance with the rules, by such person as may be determined in accordance with the rules, of a person to represent those interests in the case of any proceedings, complaint or reference.

(4) The power to make rules under this section includes power to make rules--

(a) enabling or requiring the Tribunal to hear or consider any proceedings, complaint or reference without the person who brought the proceedings or made the complaint or reference having been given full particulars of the reasons for any conduct which is the subject of the proceedings, complaint or reference;

(b) enabling or requiring the Tribunal to take any steps in exercise of their jurisdiction in the absence of any person (including the person bringing the proceedings or making the complaint or reference and any legal representative of his);

(c) enabling or requiring the Tribunal to give a summary of any evidence taken in his absence to the person by whom the proceedings were brought or, as the case may be, to the person who made the complaint or reference;

(d) enabling or requiring the Tribunal to exercise their jurisdiction, and to exercise and perform the powers and duties conferred or imposed on them (including, in particular, in relation to the giving of reasons), in such manner provided for in the rules as prevents or limits the disclosure of particular matters.

(5) Rules under this section may also include provision--

(a) enabling powers or duties of the Tribunal that relate to matters preliminary or incidental to the hearing or consideration of any proceedings, complaint or reference to be exercised or performed by a single member of the Tribunal; and

(b) conferring on the Tribunal such ancillary powers as the Secretary of State thinks necessary for the purposes of, or in connection with, the exercise of the Tribunal's jurisdiction, or the exercise or performance of any power or duty conferred or imposed on them.

(6) In making rules under this section the Secretary of State shall have regard, in particular, to--

- (a) the need to secure that matters which are the subject of proceedings, complaints or references brought before or made to the Tribunal are properly heard and considered; and
  - (b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, the economic well-being of the United Kingdom or the continued discharge of the functions of any of the intelligence services.
- (7) Rules under this section may make provision by the application, with or without modification, of the provision from time to time contained in specified rules of court.
- (8) Subject to subsection (9), no rules shall be made under this section unless a draft of them has first been laid before Parliament and approved by a resolution of each House.
- (9) Subsection (8) does not apply in the case of the rules made on the first occasion on which the Secretary of State exercises his power to make rules under this section.
- (10) The rules made on that occasion shall cease to have effect at the end of the period of forty days beginning with the day on which they were made unless, before the end of that period, they have been approved by a resolution of each House of Parliament.
- (11) For the purposes of subsection (10)--
- (a) the rules' ceasing to have effect shall be without prejudice to anything previously done or to the making of new rules; and
  - (b) in reckoning the period of forty days no account shall be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (12) The Secretary of State shall consult the Scottish Ministers before making any rules under this section; and any rules so made shall be laid before the Scottish Parliament.

## **70 Abolition of jurisdiction in relation to complaints**

- (1) The provisions set out in subsection (2) (which provide for the investigation etc of certain complaints) shall not apply in relation to any complaint made after the coming into force of this section.
- (2) Those provisions are--
- (a) section 5 of, and Schedules 1 and 2 to, the Security Service Act 1989 (investigation of complaints about the Security Service made to the Tribunal established under that Act);
  - (b) section 9 of, and Schedules 1 and 2 to, the Intelligence Services Act 1994 (investigation of complaints about the Secret Intelligence Service or GCHQ made to the Tribunal established under that Act); and

(c) section 102 of, and Schedule 7 to, the Police Act 1997 (investigation of complaints made to the Surveillance Commissioners).

## 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 and subject to subsections (10) and (11)) that are conferred or imposed otherwise than on ~~the Surveillance Commissioners~~ [a Judicial Commissioner] or the relevant judicial authority (within the meaning of section ~~23A or~~ 32A) by or under--

(a) Parts ~~I to III~~ [Parts 2 and 3] of this Act;

(b) section 5 of the Intelligence Services Act 1994 (warrants for interference with property or wireless telegraphy for the purposes of the intelligence services); . . .

(c) Part III of the Police Act 1997 (authorisation by the police or Her Majesty's Revenue and Customs of interference with property or wireless telegraphy).

(d) section 1(1) to (6) of the Data Retention and Investigatory Powers Act 2014.

~~(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;~~

~~(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 (~~2A~~ [3]) 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.

~~(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.~~

(11) The reference in subsection (2) to powers and duties conferred or imposed by or under section 1(1) to (6) of the Data Retention and Investigatory Powers Act 2014 does not include a reference to any such powers and duties which are conferred or imposed on the Secretary of State.

## **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,

~~(c) a relevant Commissioner carrying out any of his functions under this Act,~~

~~(ca) the Information Commissioner carrying out any of the Commissioner's functions under Part 2 of the Data Retention Regulations 2014,~~

~~(d) a Surveillance Commissioner carrying out his functions under this Act or the Police Act 1997, or~~

~~(e) any Assistant Surveillance Commissioner carrying out any functions of his under section 63 of this Act [or~~

~~(ba) 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.

~~(5) In this section "relevant Commissioner" means the Interception of Communications Commissioner, the Intelligence Services Commissioner or the Investigatory Powers Commissioner for Northern Ireland.~~

## **Part V - MISCELLANEOUS AND SUPPLEMENTAL**

*Minor and consequential amendments to this Part are made by Schedule 10 to the Bill.*

### **74 Warrants under the Intelligence Services Act 1994**

(1) In subsection (2) of section 5 of the 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;"

(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;".

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

(1) Section 93 of the 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--

"(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) . . . and

(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 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 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 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 Air Force Act 1955 for the time being applies by virtue of section 209 of that Act."

## **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.

## **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

(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 National 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

(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 National Crime Agency officer;

(c) . . .

(d) an officer of Revenue and Customs.

There shall be paid out of money provided by Parliament--

(a) any expenditure incurred by the Secretary of State for or in connection with the carrying out of his functions under this Act; and

(b) any increase attributable to this Act in the sums which are payable out of money so provided under any other Act.

**77A Procedure for order of sheriff under ~~section 23A or 32A~~ [section 32A of this Act or section 66 of the Investigatory Powers Act 2016]: Scotland**

(1) This section applies to an application to the sheriff for an order under ~~section 23A or 32A~~ [section 32A of this Act or section 66 of the Investigatory Powers Act 2016].

(2) Rules of court must make provision for the purposes of ensuring that an application to which this section applies is dealt with in private and must, in particular--

(a) require the sheriff to determine an application in private,

(b) secure that any hearing is to be held in private, and

(c) ensure that notice of an application (or of any order being made) is not given to--

- (i) the person to whom the authorisation or notice which is the subject of the application or order relates, or
- (ii) such a person's representatives.

(3) The Court of Session's power under section 32 of the Sheriff Courts (Scotland) Act 1971 to regulate and prescribe the procedure and practice to be followed in relation to an application to which this section applies is subject to, but is not otherwise constrained by, ~~sections 23B and 32B and this section~~ [this section, section 32B of this Act and section 66 of the Investigatory Powers Act 2016].

#### **77B Procedure for order of district judge under ~~section 23A or 32A~~ [section 32A of this Act or section 66 of the Investigatory Powers Act 2016]: Northern Ireland**

(1) The Lord Chancellor may by order make further provision about the procedure and practice to be followed in relation to an application to a district judge (magistrates' courts) in Northern Ireland for an order under ~~section 23A or 32A~~ [section 32A of this Act or section 66 of the Investigatory Powers Act 2016].

(2) Such an order may, in particular, provide--

- (a) for the manner in which, and time within which, an application may be made,
- (b) that the district judge (magistrates' courts) is to determine an application--
  - (i) in chambers,
  - (ii) in the absence of the person to whom the authorisation or notice which is the subject of the application relates,
- (c) that any hearing is to be held in private,
- (d) that notice of an order given is not to be given to--
  - (i) the person to whom the authorisation or notice which is the subject of the order relates, or
  - (ii) such a person's legal representatives.

(3) An order of the Lord Chancellor under this section may not make provision which, if it were contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Northern Ireland Assembly and would deal with a transferred matter (within the meaning of section 4(1) of the Northern Ireland Act 1998).

(4) The power of the Magistrates' Courts Rules Committee under Article 13 of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675 (NI 26)) to regulate and prescribe the procedure and practice to be followed in relation to an application to a district judge (magistrates' courts) in Northern Ireland for an order under ~~section 23A or 32A~~ [section 32A of this Act or section 66 of the Investigatory Powers Act 2016] is subject to, but is not otherwise constrained by, ~~sections 23B and 32B~~ [section 32B of this Act and section 66 of that Act] and any order made under this section.

## 78 Orders, regulations and rules

(1) This section applies to any power of the Secretary of State or the Lord Chancellor to make any order, regulations or rules under any provision of this Act.

(2) The powers to which this section applies shall be exercisable by statutory instrument.

(3) A statutory instrument which contains any order made in exercise of a power to which this section applies (other than the power to appoint a day under section 83(2)) but which contains neither--

(a) an order a draft of which has been approved for the purposes of section ~~12(10), 13(3), 22(9), 23A(6), 25(5)~~, 28(5), 29(6), 30(7), 32A(7), 35(5), 41(6), 47(2), 66(3), 67(11), 71(9) or 76A(9), nor

(b) the order to which section 35(7) applies,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A statutory instrument containing any regulations made in exercise of a power to which this section applies ~~[(other than regulations under subsection 67A(4))]~~ shall be subject to annulment in pursuance of a resolution of either House of Parliament.

~~[(4A) A statutory instrument containing regulations under section 67(4A) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.]~~

(5) Any order, regulations or rules made in exercise of a power to which this section applies may--

(a) make different provisions for different cases;

(b) contain such incidental, supplemental, consequential and transitional provision as the Secretary of State or (as the case may be) the Lord Chancellor thinks fit.

## 79 Criminal liability of directors etc

(1) Where an offence under any provision of this Act other than a provision of Part III is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of--

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) any person who was purporting to act in any such capacity,

he (as well as the body corporate) shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under any provision of this Act other than a provision of Part III--

- (a) is committed by a Scottish firm, and
- (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,

he (as well as the firm) shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(3) In this section "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

## 80 General saving for lawful conduct

Nothing in any of the provisions of this Act by virtue of which conduct of any description is or may be authorised by any warrant, authorisation or notice, or by virtue of which information may be obtained in any manner, shall be construed--

- (a) as making it unlawful to engage in any conduct of that description which is not otherwise unlawful under this Act and would not be unlawful apart from this Act;
- (b) as otherwise requiring--
  - (i) the issue, grant or giving of such a warrant, authorisation or notice, or
  - (ii) the taking of any step for or towards obtaining the authority of such a warrant, authorisation or notice,

before any such conduct of that description is engaged in; or

- (c) as prejudicing any power to obtain information by any means not involving conduct that may be authorised under this Act.

## 81 General interpretation

(1) In this Act--

~~"apparatus" includes any equipment, machinery or device and any wire or cable;~~

~~["apparatus" has the same meaning as in the Investigatory Powers Act 2016 (see section 225(1) of that Act.)]~~

~~"Assistant Commissioner of Police of the Metropolis" includes the Deputy Commissioner of Police of the Metropolis;~~

~~"Assistant Surveillance Commissioner" means any person holding office under section 63;~~

"civil proceedings" means any proceedings in or before any court or tribunal that are not criminal proceedings;

~~"communication" includes--~~

~~(a) — (except in the definition of "postal service" in section 2(1)) anything transmitted by means of a postal service;~~

~~(b) — anything comprising speech, music, sounds, visual images or data of any description; and~~

~~(c) — signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;~~

~~["Communication" has the same meaning as in the Investigatory Powers Act 2016 (see sections 223(2) and 224(2) of that Act.)]~~

"criminal", in relation to any proceedings ~~or prosecution~~, shall be construed in accordance with subsection (4);

. . .

"document" includes a map, plan, design, drawing, picture or other image;

"enactment" includes--

(a) an enactment passed after the passing of this Act; and

(b) an enactment contained in Northern Ireland legislation;

"GCHQ" has the same meaning as in the Intelligence Services Act 1994;

"Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006;

"intelligence service" means the Security Service, the Secret Intelligence Service or GCHQ;

"interception" and cognate expressions shall be construed (so far as it is applicable) in accordance with ~~section 2~~ [Sections 3 and 4 of the Investigatory Powers Act 2016];

"interception warrant" means ~~a warrant under section 5—~~

~~(a) a targeted interception warrant or mutual assistance warrant under Chapter 1 of Part 2 of the Investigatory Powers Act 2016, or~~

~~(b) a bulk interception warrant under Chapter 1 of Part 6 of that Act];~~

~~["the Investigatory Powers Commissioner" and "Judicial Commissioner" have the same meaning as in the Investigatory Powers Act 2016 (see section 225(1) of that Act);]~~

"justice of the peace" does not include a justice of the peace in Northern Ireland;

"legal proceedings" means civil or criminal proceedings in or before any court or tribunal or proceedings before an officer in respect of a service offence within the meaning of the Armed Forces Act 2006;

"modification" includes alterations, additions and omissions, and cognate expressions shall be construed accordingly;

~~"ordinary Surveillance Commissioner" means a Surveillance Commissioner other than the Chief Surveillance Commissioner;~~

"person" includes any organisation and any association or combination of persons;

"police force" means any of the following--

- (a) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (b) the metropolitan police force;
- (c) the City of London police force;
- (d) the Police Service of Scotland;
- (e) the Police Service of Northern Ireland;
- (f) the Ministry of Defence Police;
- (g) the Royal Navy Police;
- (h) the Royal Military Police;
- (i) the Royal Air Force Police;
- (j) the British Transport Police;

~~"postal service" and "public postal service" have the meanings given by section 2(1);~~

~~["postal service" has the same meaning as in the Investigatory Powers Act 2016 (see section 224(7) of that Act.)~~

~~"private telecommunication system", "public telecommunications service" and "public telecommunication system" have the meanings given by section 2(1);~~

"public authority" means any public authority within the meaning of section 6 of the Human Rights Act 1998 (acts of public authorities) other than a court or tribunal;

"senior official" means, subject to subsection (7), a member of the Senior Civil Service or a member of the Senior Management Structure of Her Majesty's Diplomatic Service;

"statutory", in relation to any power or duty, means conferred or imposed by or under any enactment or subordinate legislation;

"subordinate legislation" means any subordinate legislation (within the meaning of the Interpretation Act 1978) or any statutory rules (within the meaning of the Statutory Rules (Northern Ireland) Order 1979);

~~"Surveillance Commissioner" means a Commissioner holding office under section 91 of the Police Act 1997 and "Chief Surveillance Commissioner" shall be construed accordingly;~~

"telecommunication system" and "telecommunications service" ~~have the meanings given by section 2(4) [the same meanings as in the Investigatory Powers Act 2016 (see section 223(11) to (13) of that Act)].~~

"the Tribunal" means the tribunal established under section 65;

"wireless telegraphy" has the same meaning as in the Wireless Telegraphy Act 2006 and, in relation to wireless telegraphy, "interfere" has the same meaning as in that Act;

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

(2) In this Act--

(a) references to crime are references to conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom would constitute one or more criminal offences; and

(b) references to serious crime are references to crime that satisfies the test in subsection (3)(a) or (b).

(3) Those tests are--

(a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one (eighteen in relation to England and Wales) and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more;

(b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

(4) In this Act "criminal proceedings" includes--

proceedings before a court in respect of a service offence within the meaning of the Armed Forces Act 2006;

~~and references in this Act to criminal prosecutions shall be construed accordingly.~~

(5) For the purposes of this Act detecting crime shall be taken to include--

(a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and

(b) the apprehension of the person by whom any crime was committed;

and any reference in this Act to preventing or detecting serious crime shall be construed accordingly, ~~except that, in Chapter 1 of Part 1, it shall not include a reference to gathering evidence for use in any legal proceedings.~~

(6) In this Act--

(a) references to a person holding office under the Crown include references to any servant of the Crown and to any member of Her Majesty's forces; and

(b) references to a member of a police force, in relation to the Royal Navy Police, the Royal Military Police or the Royal Air Force Police, do not include references to any member of that force who is not for the time being attached to or serving either with that force or with another of those police forces.

(7) If it appears to the Secretary of State that it is necessary to do so in consequence of any changes to the structure or grading of the statutory civil service (or any part of it), he may by order make such amendments of the definition of "senior official" in subsection (1) as appear to him appropriate to preserve, so far as practicable, the effect of that definition.

(8) In subsection (7) "the statutory civil service" means--

(a) the civil service within the meaning of Chapter 1 of Part 1 of the Constitutional Reform and Governance Act 2010 (see section 1(4) of that Act), but

(b) also includes the Government Communications Headquarters.

(9) References in this Act to provision which, if it were contained in an Act of the Northern Ireland Assembly, would deal with a Northern Ireland transferred matter or (as the case may be) a transferred matter (see sections ~~23A(7)(b)~~, 32A(8)(c) and 77B(3)) do not include references to any such provision which would be ancillary to other provision (whether in the Act of the Northern Ireland Assembly or previously enacted) which deals with an excepted or reserved matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998).

## **82 Amendments, repeals and savings etc**

(1) The enactments specified in Schedule 4 (amendments consequential on the provisions of this Act) shall have effect with the amendments set out in that Schedule.

(2) The enactments mentioned in Schedule 5 are hereby repealed to the extent specified in the third column of that Schedule.

(3) For the avoidance of doubt it is hereby declared that nothing in this Act . . . affects any power conferred on a postal operator (within the meaning of Part 3 of the Postal Services Act 2011) by or under any enactment to open, detain or delay any postal packet or to deliver any such packet to a person other than the person to whom it is addressed.

~~(4) — Where any warrant under the Interception of Communications Act 1985 is in force under that Act at the time when the repeal by this Act of section 2 of that Act comes into force, the conduct authorised by that warrant shall be deemed for the period which—~~

~~(a) — begins with that time, and~~

~~(b) — ends with the time when that warrant would (without being renewed) have ceased to have effect under that Act,~~

~~as if it were conduct authorised by an interception warrant issued in accordance with the requirements of Chapter I of Part I of this Act.~~

~~(5) — In relation to any such warrant, any certificate issued for the purposes of section 3(2) of the Interception of Communications Act 1985 shall have effect in relation to that period as if it were a certificate issued for the purposes of section 8(4) of this Act.~~

~~(6) — Sections 15 and 16 of this Act shall have effect as if references to interception warrants and to section 8(4) certificates included references, respectively, to warrants under section 2 of the Interception of Communications Act 1985 and to certificates under section 3(2) of that Act; and references in sections 15 and 16 of this Act to intercepted or certified material shall be construed accordingly.~~

### **83 Short title, commencement and extent**

(1) This Act may be cited as the Regulation of Investigatory Powers Act 2000.

(2) The provisions of this Act, other than this section, shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed under this subsection for different purposes.

(3) This Act extends to Northern Ireland.

# Regulation of Investigatory Powers (Scotland) Act 2000

*Amended by clauses 200, 206 and paragraphs 60 to 62 and 76 to 86 of Schedule 10.*

## **1 Conduct to which this Act applies**

(1) This Act applies to the following conduct--

- (a) directed surveillance;
- (b) intrusive surveillance; and
- (c) the conduct and use of covert human intelligence sources.

(2) For the purposes of this Act surveillance is directed if it is covert but not intrusive and is undertaken--

- (a) for the purposes of a specific investigation or a specific operation;
- (b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- (c) otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this Act to be sought for the carrying out of the surveillance.

(3) Subject to subsections (4) and (5) below, surveillance is intrusive for the purposes of this Act if, and only if, it is covert surveillance that--

- (a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and
- (b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

(4) For the purposes of this Act surveillance is not intrusive to the extent that it is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle.

(5) For the purposes of this Act surveillance which--

- (a) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle; but

(b) is carried out without that device being present on the premises or in the vehicle,

is not intrusive unless the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

(6) In this Act--

(a) references to the conduct of a covert human intelligence source are references to any conduct of such a source which falls within any of paragraphs (a) to (c) of subsection (7) below, or is incidental to anything falling within any of those paragraphs; and

(b) references to the use of a covert human intelligence source are references to inducing, asking or assisting a person to engage in the conduct of such a source, or to obtain information by means of the conduct of such a source.

(7) For the purposes of this Act a person is a covert human intelligence source if the person--

(a) establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c) below;

(b) covertly uses such a relationship to obtain information or to provide access to any information to another person; or

(c) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

(8) For the purposes of this section--

(a) surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place;

(b) a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose; and

(c) a relationship is used covertly, and information obtained as mentioned in subsection (7)(c) above is disclosed covertly, if and only if it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

(9) In this section "private information", in relation to a person, includes any information relating to the person's private or family life.

(10) References in this section, in relation to a vehicle, to the presence of a surveillance device in the vehicle include references to its being located on or under the vehicle and also include references to its being attached to it.

## 2 Surveillance Commissioners

~~(1) The Scottish Ministers shall appoint for the purposes of this Act—~~

~~(a) a Chief Surveillance Commissioner; and~~

~~(b) such number of other Surveillance Commissioners as the Scottish Ministers think fit.~~

~~(2) The persons appointed under subsection (1) above shall be persons who hold or have held high judicial office within the meaning of the Constitutional Reform Act 2005 (c 4).~~

~~(3) Subject to subsections (4) to (7) below, each Surveillance Commissioner shall hold and vacate office in accordance with the terms of his appointment.~~

~~(4) Each Surveillance Commissioner shall be appointed for a term of three years.~~

~~(5) A person who ceases to be a Surveillance Commissioner (otherwise than under subsection (7) below) may be reappointed under this section.~~

~~(6) Subject to subsection (7) below, a Surveillance Commissioner shall not be removed from office before the end of the term for which that Commissioner is appointed unless a resolution approving the removal has been passed by the Scottish Parliament.~~

~~(7) A Surveillance Commissioner may be removed from office by the Scottish Ministers if after his appointment—~~

~~(a) a bankruptcy order is made against the Commissioner or the Commissioner's estate is sequestrated or the Commissioner makes a composition or arrangement with, or grants a trust deed for, the Commissioner's creditors;~~

~~(b) a disqualification order under the Company Directors Disqualification Act 1986 (c 46) or the Company Directors Disqualification (Northern Ireland) Order 2002, or an order under section 429(2)(b) (failure to pay under county court administration order) of the Insolvency Act 1986 (c 45), is made against the Commissioner; or~~

~~(c) — the Commissioner is convicted in the United Kingdom, the Channel Islands or the Isle of Man of an offence and is sentenced to imprisonment (whether suspended or not).~~

~~(8) — The Scottish Ministers shall pay to each Surveillance Commissioner such allowances as the Scottish Ministers consider appropriate.~~

~~(9) — The Scottish Ministers may, after consultation with the Chief Surveillance Commissioner, provide the Commissioners with such staff as the Scottish Ministers consider necessary for the discharge of the Commissioners' functions.~~

(10) The decisions of the ~~Chief Surveillance Commissioner~~ Investigatory Powers Commissioner or, subject to section 16 below, any ~~other Surveillance Commissioner~~ other Judicial Commissioner (including decisions as to jurisdiction) shall not be subject to appeal or liable to be questioned in any court.

### ~~3 Assistant Surveillance Commissioners~~

~~(1) — The Scottish Ministers may, after consultation with the Chief Surveillance Commissioner as to numbers, appoint as Assistant Surveillance Commissioners such number of persons as the Scottish Ministers consider necessary (in addition to the ordinary Surveillance Commissioners) for the purpose of providing the Chief Surveillance Commissioner with assistance under this section.~~

~~(2) — A person shall not be appointed as an Assistant Surveillance Commissioner unless that person holds or has held office as—~~

~~(a) — a sheriff;~~

~~(b) — a judge of the Crown Court in England and Wales or a Circuit judge there;~~  
~~or~~

~~(c) — a county court judge in Northern Ireland.~~

~~(3) — The Chief Surveillance Commissioner may require any ordinary Surveillance Commissioner or any Assistant Surveillance Commissioner to provide him with assistance in carrying out that Chief Surveillance Commissioner's functions under this Act.~~

~~(4) — The assistance that may be provided under this section includes—~~

~~(a) — the conduct on behalf of the Chief Surveillance Commissioner of the review of any matter; and~~

~~(b) — the making of a report to the Chief Surveillance Commissioner about the matter reviewed.~~

~~(5) Subsections (3) to (8) of section 2 above apply in relation to a person appointed under this section as they apply in relation to a person appointed under that section.~~

#### ~~4 Delegation of Commissioner's functions~~

~~(1) Anything authorised or required by or under this Act to be done by a relevant Commissioner may be done by any member of the staff of that Commissioner who is authorised for the purpose (whether generally or specifically) by that Commissioner.~~

~~(2) In this section "relevant Commissioner" means any Surveillance Commissioner or Assistant Surveillance Commissioner.~~

#### **5 Lawful surveillance etc**

- (1) Conduct to which this Act applies shall be lawful for all purposes if--
- (a) an authorisation under this Act confers an entitlement to engage in that conduct on the person whose conduct it is; and
  - (b) that person's conduct is in accordance with the authorisation.
- (2) A person shall not be subject to any civil liability in respect of any conduct of that person which--
- (a) is incidental to any conduct that is lawful by virtue of subsection (1) above; and
  - (b) is not itself conduct an authorisation or warrant for which is capable of being granted under a relevant enactment and might reasonably have been expected to have been sought in the case in question.
- (3) In this section "relevant enactment" means--
- (a) an enactment contained in this Act;
  - ~~[(aa) an enactment contained in Part 5, or Chapter 3 of Part 6, of the Investigatory Powers Act 2016 (equipment interference) so far as relating to the Police Service] or~~
  - (b) an enactment contained in Part III of the Police Act 1997 (c 50) (authorisation of interference with property and wireless telegraphy) insofar as relating to the Police Service.

## **6 Authorisation of directed surveillance**

(1) Subject to the following provisions of this Act, the persons designated for the purposes of this section shall each have power to grant authorisations for the carrying out of directed surveillance.

(2) A person shall not grant an authorisation for the carrying out of directed surveillance unless that person is satisfied--

(a) that the authorisation is necessary on grounds falling within subsection (3) below; and

(b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(3) An authorisation is necessary on grounds falling within this subsection if it is necessary--

(a) for the purpose of preventing or detecting crime or of preventing disorder;

(b) in the interests of public safety; or

(c) for the purpose of protecting public health.

(4) The conduct that is authorised by an authorisation for the carrying out of directed surveillance is any conduct that--

(a) consists in the carrying out of directed surveillance of any such description as is specified in the authorisation; and

(b) is carried out in the circumstances described in the authorisation and for the purposes of the investigation or operation specified or described in the authorisation.

## **7 Authorisation of covert human intelligence sources**

(1) Subject to the following provisions of this Act, the persons designated for the purposes of this section shall each have power to grant authorisations for the conduct or the use of a covert human intelligence source.

(2) A person shall not grant an authorisation for the conduct or the use of a covert human intelligence source unless that person is satisfied--

- (a) that the authorisation is necessary on grounds falling within subsection (3) below;
  - (b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use; and
  - (c) that arrangements exist for the source's case that satisfy the requirements of subsection (6) below and such other requirements as may be imposed by order made by the Scottish Ministers.
- (3) An authorisation is necessary on grounds falling within this subsection if it is necessary--
- (a) for the purpose of preventing or detecting crime or of preventing disorder;
  - (b) in the interests of public safety; or
  - (c) for the purpose of protecting public health.
- (4) The Scottish Ministers may by order--
- (a) prohibit the authorisation under this section of any such conduct or uses of covert human intelligence sources as may be described in the order; and
  - (b) impose requirements, in addition to those provided for by subsection (2) above, that must be satisfied before an authorisation is granted under this section for any such conduct or uses of covert human intelligence sources as may be described.
- (5) The conduct that is authorised by an authorisation for the conduct or the use of a covert human intelligence source is any conduct that--
- (a) is comprised in any such activities involving conduct of a covert human intelligence source, or the use of a covert human intelligence source, as are specified or described in the authorisation;
  - (b) consists in conduct by or in relation to the person who is so specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and
  - (c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.
- (6) For the purposes of this Act there are arrangements for the source's case that satisfy the requirements of this subsection if such arrangements are in force as are necessary for ensuring--
- (a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility

for dealing with the source on behalf of that authority, and for the source's security and welfare;

(b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;

(c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source;

(d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Scottish Ministers; and

(e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

(7) In this section "relevant investigating authority", in relation to an authorisation for the conduct or the use of an individual as a covert human intelligence source, means (subject to subsection (8) below) the public authority for whose benefit the activities of that individual as such a source are to take place.

(8) In the case of any authorisation for the conduct or the use of a covert human intelligence source whose activities are to be for the benefit of more than one public authority, the references in subsection (6) above to the relevant investigating authority are references to one of them (whether or not the same one in the case of each reference).

## **8 Persons entitled to grant authorisations under sections 6 and 7**

(1) Subject to subsection (2) below, the persons designated for the purposes of sections 6 and 7 above are the individuals holding such offices, ranks or positions with relevant public authorities as are prescribed for the purposes of this subsection by order made by the Scottish Ministers.

(2) The Scottish Ministers may by order impose restrictions--

(a) on the authorisations under sections 6 and 7 above that may be granted by any individual holding an office, rank or position with a specified public authority; and

(b) on the circumstances in which, or the purposes for which, such authorisations may be granted by any such individual.

(3) A public authority is a relevant public authority for the purposes of this section in relation to sections 6 and 7 above if it is--

(aa) the Police Service;

(b) the Scottish Administration;

(c) a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 (c 39);

(ca) the Police Investigations and Review Commissioner;

(d) ...

(e) ...

(f) ...

(g) ...

(h) the Scottish Environment Protection Agency;

(i) the Common Services Agency for the Scottish Health Service.

(4) The Scottish Ministers may by order amend subsection (3) above by--

(a) adding a public authority to those enumerated in that subsection;

(b) removing a public authority therefrom;

(c) making any change consequential on any change in the name of a public authority enumerated therein.

(5) No order shall be made under subsection (4)(a) above unless it has been laid in draft before and approved by resolution of the Scottish Parliament.

**9 ...**

...

## **10 Authorisation of intrusive surveillance**

(1) Subject to the following provisions of this Act, any of the persons mentioned in subsection (1A) may grant authorisations for the carrying out of intrusive surveillance.

(1A) Those persons are--

(a) the chief constable of the Police Service and any other senior officer of the Police Service who is designated by the chief constable for the purposes of this section,

(aa) the Police Investigations and Review Commissioner;

(b) . . .

(c) . . . .

(2) No such authorisation shall be granted unless the person granting it is satisfied--

(a) that the authorisation is necessary for the purpose of preventing or detecting serious crime; and

(b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

(3) The matters to be taken into account in considering whether the requirements of subsection (2) above are satisfied in the case of any authorisation shall include whether the information which it is thought necessary to obtain by the authorised conduct could reasonably be obtained by other means.

(4) The conduct that is authorised by an authorisation for the carrying out of intrusive surveillance is any conduct that--

(a) consists in the carrying out of intrusive surveillance of any such description as is specified in the authorisation;

(b) is carried out in relation to the residential premises specified or described in the authorisation or in relation to the private vehicle so specified or described; and

(c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

**10A ...**

...

## **11 Rules for grant of authorisations**

(1) A person who is a designated person for the purposes of section 6 or 7 above by reference to the office, rank or position with the Police Service held by that person shall not grant an authorisation under that section except on an application made by a constable of the Police Service.

(2) An authorisation for the carrying out of intrusive surveillance shall not be granted by the chief constable or any other senior officer of the Police Service except on an application by a constable of the Police Service.

(2A) The Police Investigations and Review Commissioner shall not grant an authorisation for the carrying out of intrusive surveillance except--

(a) on an application by one of the Commissioner's staff officers; and

(b) where the intrusive surveillance is to be carried out in relation to an investigation carried out in pursuance of paragraph (b)(i) of section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

(3) . . .

(4) A single authorisation may combine both--

(a) an authorisation granted under this Act--

(i) by, or on the application of, a constable of the Police Service;

(ii) by the Police Investigations and Review Commissioner; or

(iii) by, or on the application of, a staff officer of the Police Investigations and Review Commissioner; and

(b) an authorisation given by, or on the application of, that individual under Part III of the Police Act 1997 (c 50) (authorisation of interference with property and wireless telegraphy) insofar as relating to--

(i) where that individual is a constable of the Police Service, the Police Service; or

(ia) where that individual is the Police Investigations and Review Commissioner or a staff officer of that Commissioner, the Commissioner,

(ii) . . .

but the provisions of this Act or the 1997 Act that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.

(5) . . .

12 ...

...

### **12ZA Grant of authorisation in cases of urgency: Police Investigations and Review Commissioner**

(1) This section applies in the case of an application to the Police Investigations and Review Commissioner for an authorisation for the carrying out of intrusive surveillance where the case is urgent.

(2) If it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by the Police Investigations and Review Commissioner, the application may be made to and considered by any staff officer of the Commissioner whom the Commissioner designates for the purposes of this section.

12A ...

...

### **13 Notification of authorisations for intrusive surveillance**

(1) Where a person grants or cancels an authorisation for the carrying out of intrusive surveillance, the person shall give notice of the grant or cancellation to an ordinary ~~Surveillance Commissioner~~ [a Judicial Commissioner].

(2) A notice given for the purposes of subsection (1) above--

(a) must be given in writing as soon as reasonably practicable after the grant or, as the case may be, cancellation of the authorisation to which it relates;

(b) must be given in accordance with any such arrangements made for the purposes of this paragraph by the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] as are for the time being in force; and

(c) must specify such matters as the Scottish Ministers may by order prescribe.

(3) A notice under this section of the grant of an authorisation shall, as the case may be, either--

- (a) state that the approval of a ~~Surveillance Commissioner~~ [Judicial Commissioner] is required by section 14 below before the grant of the authorisation will take effect; or
- (b) state that the case is one of urgency and set out the grounds on which the person granting the authorisation is satisfied that the case is one of urgency.
- (4) Where a notice for the purposes of subsection (1) above of the grant of an authorisation has been received by ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner], the Commissioner shall, as soon as practicable--
- (a) scrutinise the authorisation; and
- (b) in a case where notice has been given in accordance with subsection (3)(a) above, decide whether or not to approve the authorisation.
- (5) Subject to subsection (6) below, the Scottish Ministers shall not make an order under subsection (2)(c) above unless a draft of the order has been laid before and approved by a resolution of the Scottish Parliament.
- (6) Subsection (5) above does not apply in the case of an order made on the first occasion on which the Scottish Ministers exercise their powers to make an order under subsection (2)(c) above.
- (7) The order made on that occasion shall cease to have effect at the end of the period of 40 days beginning with the day on which it was made unless, before the end of that period, it has been approved by resolution of the Scottish Parliament.
- (8) For the purposes of subsection (7) above--
- (a) the order's ceasing to have effect shall be without prejudice to anything previously done or to the making of a new order; and
- (b) in reckoning the period of 40 days, no account shall be taken of any period during which the Scottish Parliament is dissolved or is in recess for more than 4 days.
- (9) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.

#### **14 Approval required for authorisations to take effect**

- (1) Subject to subsection (2) below, an authorisation for the carrying out of intrusive surveillance shall not take effect until such time (if any) as--
- (a) the grant of the authorisation has been approved by ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner]; and

(b) written notice of the decision of that approval by that Commissioner has been given, in accordance with subsection (3) below, to the person who granted the authorisation.

(2) Where the person who grants the authorisation--

(a) is satisfied that the case is one of urgency; and

(b) gives notice in accordance with section 13(3)(b) above,

subsection (1) above shall not apply to the authorisation, and the authorisation shall have effect from the time of its grant.

(3) Where subsection (1) above applies to the authorisation--

(a) a ~~Surveillance Commissioner~~ [Judicial Commissioner] shall give approval under this section to the authorisation if, and only if, satisfied that there are reasonable grounds for being satisfied that the requirements of section 10(2)(a) and (b) above are satisfied in the case of the authorisation; and

(b) a ~~Surveillance Commissioner~~ [Judicial Commissioner] who makes a decision as to whether or not the authorisation should be approved shall, as soon as reasonably practicable after making that decision, give written notice of that decision to the person who granted the authorisation.

(4) If an ~~ordinary Surveillance Commissioner~~ [a Judicial Commissioner] decides not to approve an authorisation to which subsection (1) above applies, the Commissioner shall make a report of that decision and the Commissioner's findings to the most senior relevant person.

(5) In this section "the most senior relevant person" means--

(a) in relation to an authorisation granted on the application of a constable of the Police Service, the chief constable of the Police Service; and

(aa) in relation to an authorisation granted on an application by a staff officer of the Police Investigations and Review Commissioner, the Police Investigations and Review Commissioner

(b) . . . .

(6) Any notice that is required by any provision of this section to be given in writing may be given, instead, by being transmitted by electronic means.

(7) . . .

## 15 Quashing of authorisations etc

(1) Where ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] is at any time satisfied that, at the time the authorisation for the carrying out of intrusive surveillance was granted or at any time when it was renewed, there were no reasonable grounds for being satisfied that the requirements of section 10(2)(a) and (b) above were satisfied, the Commissioner may quash the authorisation with effect, as the Commissioner thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.

(2) If ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] is satisfied at any time while the authorisation is in force that there are no longer any reasonable grounds for being satisfied that the requirements of section 10(2)(a) and (b) above are satisfied in relation to the authorisation, he may cancel the authorisation with effect from such time as appears to the Commissioner to be the time from which those requirements ceased to be so satisfied.

(3) Where, in the case of any authorisation of which notice has been given in accordance with section 13(3)(b) above, ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] is at any time satisfied that, at the time of the grant or renewal of the authorisation to which that notice related, there were no reasonable grounds for being satisfied that the case was one of urgency, the Commissioner may quash the authorisation with effect, as the Commissioner thinks fit, from the time of the grant of the authorisation or from the time of any renewal of the authorisation.

(4) Subject to subsection (6) below, where ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] quashes an authorisation under this section, the Commissioner may order the destruction of any records relating wholly or partly to information obtained by the authorised conduct after the time from which the decision of the Commissioner takes effect.

(5) Subject to subsection (6) below, where--

(a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (1) or (3) above); and

(b) ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] is satisfied that there was a time while the authorisation was in force when there were no reasonable grounds for being satisfied that the requirements of section 10(2)(a) and (b) above continued to be satisfied in relation to the authorisation,

the Commissioner may order the destruction of any records relating, wholly or partly, to information obtained at such time by the authorised conduct.

(6) No order shall be made under this section for the destruction of any records required for pending criminal or civil proceedings.

(7) Where ~~an ordinary Surveillance Commissioner~~ [a Judicial Commissioner] exercises a power conferred by this section, the Commissioner shall, as soon as reasonably practicable, make a report of that exercise of that power and of the Commissioner's reasons for doing so--

(a) to the most senior relevant person (within the meaning of section 14 above);

(aa) . . . and

(b) to the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner (if the Commissioner is not that Commissioner)].

(8) Where an order for the destruction of records is made under this section, the order shall not become operative until such time (if any) as--

(a) the period for appealing against the decision to make the order has expired; and

(b) any appeal brought within that period has been dismissed by the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner].

(9) No notice shall be required to be given under section 13(1) above in the case of a cancellation under subsection (2) above.

## **16 Appeals against decisions by ~~Surveillance Commissioners~~ [Judicial Commissioners]**

(1) A person who granted an authorisation for the carrying out of intrusive surveillance may appeal to the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] against any of the following--

(a) any refusal ~~of an ordinary Surveillance Commissioner~~ [a Judicial Commissioner (other than the Investigatory Powers Commissioner)] to approve the authorisation;

(b) any decision of such a Commissioner to quash or cancel the authorisation;

(c) any decision of such a Commissioner to make an order under section 15 above for the destruction of records.

(1A) Where an authorisation for the carrying out of intrusive surveillance is granted by a senior officer of the Police Service designated by the chief constable under section 10(1A)(a), the chief constable shall also be entitled to appeal under this section.

(1B) Where an authorisation for the carrying out of intrusive surveillance is granted by a staff officer designated by the Police Investigations and Review Commissioner under section 12ZA(2), the Commissioner shall also be entitled to appeal under this section.

(2) . . .

(3) An appeal under this section must be brought within the period of seven days beginning with the day on which the refusal or decision appealed against is reported to the appellant.

(4) Subject to subsection (5) below, the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner], on an appeal under this section, shall allow the appeal--

(a) if satisfied that there were reasonable grounds for being satisfied that the requirements of section 10(2)(a) and (b) above were satisfied in relation to the authorisation at the time in question; or

(b) if not satisfied that the authorisation is one of which notice was given in accordance with section 13(3)(b) above without there being any reasonable grounds for being satisfied that the case was one of urgency.

(5) If, on an appeal falling within subsection (1)(b) above, the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] --

(a) is satisfied that grounds exist which justify the quashing or cancellation under section 15 above of the authorisation in question; but

(b) considers that the authorisation should have been quashed or cancelled from a different time from that from which it was quashed or cancelled by the ~~ordinary Surveillance Commissioner~~ [Judicial Commissioner] against whose decision the appeal is brought,

the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] may modify the ~~ordinary Surveillance Commissioner's~~ [Judicial Commissioner's] decision to quash or cancel the authorisation, and any related decision for the destruction of records, so as to give effect to the decision under section 15 above that the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] considers should have been made.

(6) Where, on appeal under this section against a decision to quash or cancel an authorisation, the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] allows the appeal the Commissioner shall also quash any related order for the destruction of records relating to information obtained by the authorised conduct.

(7) . . .

## **17 Appeals to ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner]: supplementary**

(1) On determining an appeal under section 16 above, the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] shall give notice of the determination to both--

- (a) the person by whom the appeal was brought; and
- (b) the ~~ordinary Surveillance Commissioner~~ [Judicial Commissioner] whose decision was appealed against.

(2) Where the determination of the Chief Surveillance Commissioner on an appeal under section 16 above is a determination to dismiss the appeal, the Chief Surveillance Commissioner shall make a report of the findings--

- (a) to the persons mentioned in subsection (1) above; and
- (b) to the Scottish Ministers.

(3) Subject to subsection (2) above, the Chief Surveillance Commissioner shall not give any reasons for any determination of the Commissioner on an appeal under section 16 above.

## **~~18 Information to be provided to Surveillance Commissioners~~**

~~It shall be the duty of--~~

- ~~(a) every constable of the Police Service; and~~
- ~~(aa) the Police Investigations and Review Commissioner and every staff officer of the Commissioner;~~
- ~~(b) ...~~

~~to comply with any request of a Surveillance Commissioner for documents or information required by the Commissioner for the purpose of enabling the Commissioner to carry out the functions of such a Commissioner under sections 13 to 17 above.~~

## **19 General rules about grant, renewal and duration**

(1) An authorisation under this Act--

(a) may be granted or renewed orally in any urgent case in which the entitlement to act of the person granting or renewing it is not confined to urgent cases; and

(b) in any other case, must be in writing.

(2) A single authorisation may combine two or more different authorisations under this Act; but the provisions of this Act that are applicable in the case of each of the authorisations shall apply separately in relation to the part of the combined authorisation to which they are applicable.

(3) Subject to subsections (4) and (8) below, an authorisation under this Act shall cease to have effect at the end of the following period--

(a) in the case of an authorisation which--

(i) has not been renewed and was granted either orally or by a person whose entitlement to act is confined to urgent cases; or

(ii) was last renewed either orally or by such a person,

the period of 72 hours beginning with the time when the grant of the authorisation or, as the case may be, its latest renewal takes effect;

(b) in a case not falling within paragraph (a) above in which the authorisation is for the conduct or the use of a covert human intelligence source, the period of 12 months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect; and

(c) in any case not falling within paragraph (a) or (b) above, the period of three months beginning with the day on which the grant of the authorisation or, as the case may be, its latest renewal takes effect.

(4) Subject to subsection (6) below, an authorisation under this Act may be renewed, at any time before the time at which it ceases to have effect, by any person who would be entitled to grant a new authorisation in the same terms.

(5) Sections 6 to 18 above shall have effect in relation to the renewal of an authorisation under this Act as if references to the grant of an authorisation included references to its renewal.

(6) A person shall not renew an authorisation for the conduct or the use of a covert human intelligence source, unless the person--

(a) is satisfied that a review has been carried out of the matters mentioned in subsection (7) below; and

(b) has, for the purpose of deciding whether to renew the authorisation, considered the results of that review.

(7) The matters mentioned in subsection (6) above are--

(a) the use made of the source in the period since the grant or, as the case may be, latest renewal of the authorisation; and

(b) the tasks given to the source during that period and the information obtained from the conduct or the use of the source.

(8) The Scottish Ministers may by order provide, in relation to authorisations of such descriptions as may be specified in the order, that subsection (3) above is to have effect as if the period at the end of which an authorisation of a description so specified is to cease to have effect were such period, shorter than that provided for by that subsection, as may be fixed by or determined in accordance with that order.

(9) References in this section to the time at which, or the day on which, the grant or renewal of an authorisation takes effect are references--

(a) in the case of the grant of an authorisation to which paragraph (c) below does not apply, to the time at which or, as the case may be, day on which the authorisation is granted;

(b) in the case of the grant of the renewal of an authorisation to which paragraph (c) below does not apply, to the time at which or, as the case may be, day on which the authorisation would cease to have effect but for the renewal; and

(c) in the case of any grant or renewal that takes effect under subsection (1) of section 14 above at a time or on a day later than that given in paragraph (a) or (b) above, to the time at which or, as the case may be, the day on which the grant or renewal takes effect in accordance with that subsection.

## **20 Cancellation of authorisations**

(1) The person who granted or, as the case may be, last renewed an authorisation under this Act shall cancel it--

(a) if satisfied that the authorised conduct no longer satisfies the requirements of section 6(2)(a) and (b), 7(2)(a) and (b) or, as the case may be, 10(2)(a) and (b) above; or

(b) in the case of an authorisation under section 7 above, if satisfied that arrangements for the source's case that satisfy the requirements of subsection (2)(c) of that section no longer exist.

(2) Where an authorisation under this Act was granted or, as the case may be, last renewed--

(a) by a person entitled to act for any other person; or

(b) by the deputy of any other person,

that other person shall cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.

(2A) Where an authorisation under this Act was granted or, as the case may be, last renewed by a senior officer of the Police Service and it is not reasonably practicable for that senior officer to cancel it under subsection (1) above, any senior officer of the Police Service designated by the chief constable for the purposes of section 10 above may cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.

(2B) Where an authorisation under this Act was granted or, as the case may be, last renewed by the Police Investigations and Review Commissioner and it is not reasonably practicable for the Commissioner to cancel it under subsection (1) above, any person designated by the Commissioner for the purposes of section 12ZA above may cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.

(3) . . .

(4) The Scottish Ministers may by regulations provide for the person by whom any duty imposed by this section is to be performed in a case in which it would otherwise fall on a person who is no longer available to perform it.

(5) Regulations under subsection (4) above may provide for the person on whom the duty is to fall to be a person appointed in accordance with the regulations.

(6) . . .

(7) . . .

## ~~21 Functions of Chief Surveillance Commissioner [~~

~~(1) Subject to subsection (4) below, the Chief Surveillance Commissioner shall keep under review the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under this Act.~~

~~(2) — The Chief Surveillance Commissioner may require any ordinary Surveillance Commissioner to provide assistance in the carrying out of the former's functions under subsection (1) above, and that assistance may include—~~

~~(a) — the conduct on behalf of the Chief Surveillance Commissioner of the review of any matter; and~~

~~(b) — the making of a report to the Chief Surveillance Commissioner about the matter reviewed.~~

~~(3) — The Chief Surveillance Commissioner shall give the Tribunal all such assistance (including the opinion of that Commissioner as to any issue falling to be determined by the Tribunal) as is appropriate—~~

~~(a) — in connection with the investigation of any matter by the Tribunal; or~~

~~(b) — otherwise for the purposes of the Tribunal's consideration or determination of any matter.~~

~~(4) — It shall not be the function of the Chief Surveillance Commissioner to keep under review the exercise of any power of the Scottish Ministers to make, amend or revoke any subordinate legislation.~~

## **22 Co-operation with and reports by Commissioner**

~~(1) — It shall be the duty of—~~

~~(a) — every person by whom, or on whose application, there has been granted any authorisation the grant of which is subject to review by the Chief Surveillance Commissioner;~~

~~(b) — every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a) above;~~

~~(c) — every person who has engaged in any conduct with the authority of such an authorisation; and~~

~~(d) — every person who holds or has held any office, rank or position with a public authority for whose benefit any such authorisation has been or may be granted,~~

~~to disclose or provide to that Commissioner all such documents and information as that Commissioner may require for the purpose of enabling that Commissioner to carry out that Commissioner's functions under this Act.~~

~~(2) If it at any time appears to the Chief Surveillance Commissioner [Investigatory Powers Commissioner] --~~

- (a) that there has been a contravention of the provisions of this Act in relation to any matter with which that Commissioner is concerned; and
- (b) that the contravention has not been the subject of a report made to the Scottish Ministers by the Tribunal,

that Commissioner shall make a report to the Scottish Ministers with respect to that contravention.

(3) The ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] shall make an annual report to the Scottish Ministers with respect to the carrying out of that Commissioner's functions under[, and in relation to,] this Act.

(4) The Scottish Ministers shall lay before the Scottish Parliament a copy of every annual report made by the Commissioner under subsection (3) above, together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (5) below.

(5) If it appears to the Scottish Ministers, after consultation with the Commissioner, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to--

- (a) the prevention or detection of serious crime; or
- (b) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by that Commissioner,

the Scottish Ministers may exclude that matter from the copy of the report as laid before the Parliament.

## **23 Complaints to the Tribunal**

(1) In this section, the "Tribunal" means the tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000 (c 23).

(2) A person who is aggrieved by any conduct falling within subsection (3) below which the person believes--

- (a) to have taken place in relation to that person or to any property of that person; and
- (b) to have taken place in challengeable circumstances,

is entitled to complain to the Tribunal.

(3) Conduct falls within this subsection if (whenever it occurred) it is conduct to which this Act applies.

(4) For the purposes of this section conduct takes place in challengeable circumstances if--

(a) it takes place with the authority, or purported authority, of anything falling within subsection (5) below; or

(b) the circumstances are such that (whether or not there is such authority) it would not have been appropriate for the conduct to take place without it, or at least without proper consideration having been given to whether such authority should be sought.

(5) The following fall within this subsection--

(a) an authorisation under this Act;

(b) an authorisation under section 93 of the Police Act 1997 (c 50) insofar as relating to the Police Service or to the Police Investigations and Review Commissioner . . .

## **24 Issue and revision of codes of practice**

(1) The Scottish Ministers shall issue one or more codes of practice relating to the exercise and performance of the powers and duties mentioned in subsection (2) below.

(2) Those powers and duties are those (excluding any power to make subordinate legislation) that are conferred or imposed, by or under--

(a) this Act;

~~[(aa) Part 5, or Chapter 3 of Part 6, of the Investigatory Powers Act 2016 (equipment interference) so far as relating to the Police Service or the Police Investigations and Review Commissioner] and~~

(b) Part III of the Police Act 1997 (c 50) (authorisation of interference with property or wireless telegraphy) insofar as relating to the Police Service or to the Police Investigations and Review Commissioner . . . ,

otherwise than on ~~the Surveillance Commissioners appointed under this Act or the Commissioners holding office under section 91 of that Act [the Judicial Commissioners]~~.

(3) Before issuing a code of practice under subsection (1) above, the Scottish Ministers shall--

(a) prepare and publish a draft of that code; and

(b) consider any representations made to them about the draft,

and the Scottish Ministers may incorporate in the code finally issued any modifications made by them to the draft after its publication.

(4) The Scottish Ministers shall lay before the Scottish Parliament every draft code of practice prepared and published by them under this section.

(5) A code of practice issued by the Scottish Ministers under this section shall not be brought into force except in accordance with an order made by them.

(6) An order under subsection (5) above may contain such transitional provisions and savings as appear to the Scottish Ministers to be necessary or expedient in connection with the bringing into force of the code brought into force by that order.

(7) The Scottish Ministers 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 (3) to (6) above 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 Scottish Ministers 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, and approved by a resolution of the Parliament.

## **25 Interim codes of practice**

(1) The Scottish Ministers may, notwithstanding the provisions of section 24 above, issue one or more interim codes of practice relating to the exercise and performance of the powers and duties mentioned in subsection (2) of that section.

(2) An interim code issued under subsection (1) above shall have effect from its date of issue as if it were a code issued under subsection (1) of section 24 above which had been brought into force by an order under subsection (5) of that section.

(3) An interim notice issued under subsection (1) above shall cease to have effect insofar as it is superseded by a code issued and brought into force under section 24 above.

## **26 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 24 or 25 above 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 24 or 25 above shall not of itself render the person liable to any criminal or civil proceedings.

(3) A code of practice in force at any time under section 24 or 25 above shall be admissible in evidence in any criminal or civil proceedings.

(4) If any provision of a code of practice issued under section 24 or 25 or revised under section 24(7) above appears to--

(a) the court or tribunal conducting any civil or criminal proceedings;

(b) the ~~Chief Surveillance Commissioner~~ [Investigatory Powers Commissioner] carrying out any of the functions of that Commissioner under this Act; or

(c) a ~~Surveillance Commissioner~~ [a Judicial Commissioner other than the Investigatory Powers Commissioner] carrying out the functions of that Commissioner under this Act insofar as relating to the Police Service or the Police Investigations and Review Commissioner,

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.

## **27 Power to extend or modify authorisation provisions**

(1) The Scottish Ministers may by order do one or both of the following--

(a) apply this Act, with such modifications as they think fit, to any such surveillance, that is neither directed nor intrusive, as may be described in the order;

(b) provide for any description of directed surveillance to be treated for the purposes of this Act as intrusive surveillance.

(2) No order shall be made under this section unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.

## **28 Orders and regulations**

(1) This section applies to any power of the Scottish Ministers to make any order or regulations under any provision of this Act.

(2) The powers to which this section applies shall be exercisable by statutory instrument.

(3) A statutory instrument containing any order or regulations made in exercise of a power to which this section applies, other than one containing--

(a) an order a draft of which has been approved for the purposes of section 8(5), 13(5) or (7), 24(9) and 27(2) above; or

(b) an order under section 32(2) below appointing a day,

shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) An order or regulations made in exercise of a power to which this section applies may--

(a) make different provisions for different cases; and

(b) contain such incidental, supplemental, consequential and transitional provisions as the Scottish Ministers think fit.

## **29 Financial provision**

The Scottish Ministers shall pay to the Secretary of State such amount as is agreed between them to be appropriate to reimburse the expenditure or increased expenditure incurred by the Secretary of State in consequence of this Act.

## **30 General saving for lawful conduct**

Nothing in any of the provisions of this Act by virtue of which conduct of any description is or may be authorised, or by virtue of which information may be obtained in any manner, shall be construed--

(a) as making it unlawful to engage in any conduct of that description which is not otherwise unlawful under this Act and would not be unlawful apart from this Act;

(b) as otherwise requiring--

(i) the issue, grant or giving of such authorisation; or

(ii) the taking of any step for or towards obtaining the authority of such authorisation,

before any such conduct of that description is engaged in; or

(c) as prejudicing any power to obtain information by any means not involving conduct that may be authorised under this Act.

### 31 Interpretation

(1) In this Act--

"apparatus" includes any equipment, machinery or device and any wire or cable;

"communication" includes--

(a) anything comprising speech, music, sounds, visual images, or data of any description; and

(b) signals serving either for the impartation of anything between persons, between a person and a thing or between things or for the actuation or control of any apparatus;

"covert human intelligence source" shall be construed in accordance with section 1(7) above;

"directed" and "intrusive", in relation to surveillance, shall be construed in accordance with section 1(2) to (5) above;

~~["the Investigatory Powers Commissioner" and "Judicial Commissioner" have the same meanings as in the Investigatory Powers Act 2016 (see section 225(1) of that Act]~~

...

~~"ordinary Surveillance Commissioner" means a Surveillance Commissioner other than a Chief Surveillance Commissioner;~~

"Police Service" means the Police Service of Scotland;

...

"private vehicle" means (subject to subsection (9)(a) below) any vehicle which is used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it;

"residential premises" means (subject to subsection (9)(b) below) so much of any premises as is for the time being occupied or used by any person, however

temporarily, for residential purposes or otherwise as living accommodation (including hotel or prison accommodation that is so occupied or used);

"senior officer" has the same meaning as in the Police and Fire Reform (Scotland) Act 2012 (asp 8);

"surveillance" shall be construed in accordance with subsections (2) to (3) below;

~~"Surveillance Commissioner" means a Commissioner holding office under section 2 above and "Chief Surveillance Commissioner" shall be construed accordingly;~~

"surveillance device" means any apparatus designed or adapted for use in surveillance;

"the Tribunal" has the same meaning as in section 23(1) above.

- (2) Subject to subsection (3) below, in this Act "surveillance" includes--
- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
  - (b) recording anything monitored, observed or listened to in the course of surveillance; and
  - (c) surveillance by or with the assistance of a surveillance device.
- (3) References in this Act to surveillance do not include references to--
- (a) any conduct of a covert human intelligence source for obtaining or recording (whether or not using a surveillance device) any information which is disclosed in the presence of the source;
  - (b) the use of a covert human intelligence source for so obtaining or recording information; or
  - (c) any such entry on or interference with property or with wireless telegraphy as would be unlawful unless authorised under Part III of the Police Act 1997 (c 50) (authorisation of interference with property or wireless telegraphy).
- (4) References in this Act to an individual holding an office or position with a public authority include references to any member, official or employee of that authority.
- (4A) References in this Act to a staff officer of the Police Investigations and Review Commissioner are references to any person who--

(a) is a member of the Commissioner's staff appointed under paragraph 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006; or

(b) is a member of the Commissioner's staff appointed under paragraph 7 of that schedule to whom paragraph 7B(2) of that schedule applies.

(5) For the purposes of this Act the activities of a covert human intelligence source which are to be taken as activities for the benefit of a particular public authority include any of that source's conduct as such a source which is in response to inducements or requests made by or on behalf of that authority.

(6) In this Act--

(a) references to crime are references to conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom would constitute one or more criminal offences; and

(b) references to serious crime are references to crime that satisfies the test in subsection (7)(a) or (b) below.

(7) Those tests are--

(a) that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more;

(b) that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

(8) For the purposes of this Act, detecting crime shall be taken to include--

(a) establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed; and

(b) the apprehension of the person by whom any crime was committed,

and any reference in this Act to preventing or detecting serious crime shall be construed accordingly.

(9) In subsection (1) above--

(a) the reference to a person having the right to use a vehicle does not, in relation to a motor vehicle, include a reference to a person whose right to use the vehicle derives only from having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey; and

(b) the reference to premises occupied or used by any person for residential purposes or otherwise as living accommodation does not include a reference to so much of any premises as constitutes any common area to which the person has or is allowed access in connection with the person's use or occupation of any accommodation.

(10) In this section--

"premises" includes any vehicle or moveable structure and any other place whatever, whether or not occupied as land;

"vehicle" includes any vessel, aircraft or hovercraft.

### **32 Short title and commencement**

(1) This Act may be cited as the Regulation of Investigatory Powers (Scotland) Act 2000.

(2) The provisions of this Act shall come into force on such day as the Scottish Ministers may by order appoint; and different days may be appointed under this subsection for different purposes.

## Northern Ireland Act 1998

*Paragraph 17 of Schedule 2 and Paragraph 9 of Schedule 3 to the Northern Ireland Act 1998 would be amended by paragraphs 2, 38 and 92 of Schedule 10 to the Bill. Only paragraph 17 of Schedule 2 and Paragraph 9 of Schedule 3 to the Northern Ireland Act 1998 would be amended by the Bill and accordingly only those paragraphs are shown below.*

### SCHEDULE 2 - EXCEPTED MATTERS

#### 17

National security (including the Security Service, the Secret Intelligence Service and the Government Communications Headquarters); special powers and other provisions for dealing with terrorism or subversion; ~~the Technical Advisory Board provided for by section 211 of the Investigatory Powers Act 2016;~~ the subject-matter of--

(a) the Official Secrets Acts 1911 and 1920;

~~(b) Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000, except so far as relating to the prevention or detection of serious crime (within the meaning of that Act); and~~

~~[(b) the subject-matter of sections 2 to 8, Schedule 1, Part 2 and Chapter 1 of Part 6 of the Investigatory Powers Act 2016, except so far as relating to the prevention or detection of serious crime (within the meaning of that Act);]~~

(c) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.

### SCHEDULE 3 - RESERVED MATTERS

#### 9

(1) The following matters--

~~(a) the subject-matter of the following provisions of the Regulation of Investigatory Powers Act 2000--~~

~~(i) Chapter 1 of Part 1, so far as relating to the prevention or detection of serious crime (within the meaning of that Act), and~~

~~(ii) so far as relating to the prevention or detection of crime (within the meaning of that Act) or the prevention of disorder--~~

~~(aa) Chapter 2 of Part 1, and~~

~~(bb) Parts 2 and 3;~~

[(a) the subject-matter of Parts 2 and 3 of the Regulation of Investigatory Powers Act 2000, so far as relating to the prevention or detection of crime (within the meaning of that Act) or the prevention of disorder;

(aa) the subject-matter of the following provisions of the Investigatory Powers Act 2016, so far as relating to the prevention or detection of serious crime (within the meaning of that Act)—

(i) sections 2 to 8 and Schedule 1,

(ii) Part 2, and

(iii) Chapter 1 of Part 6;

(ab) the subject-matter of section 9, Parts 3 and 4 and Chapter 2 of Part 6 of the Investigatory Powers Act 2016, so far as relating to the prevention or detection of crime (within the meaning of that Act) or the prevention of disorder;

(ac) the subject-matter of section 10 of, and Schedule 2 to, the Investigatory Powers Act 2016, so far as relating to the prevention or detection of crime (within the meaning of that Act);]

(b) in relation to the prevention or detection of crime, the subject-matter of Part 3 of the Police Act 1997;

(c) the operation of--

(i) sections 21 to 40 of, and Schedules 3 and 4 to, the Justice and Security (Northern Ireland) Act 2007, and

(ii) section 102 of, and Schedule 12 to, the Terrorism Act 2000;

(d) in relation to terrorism, the exercise of the Royal prerogative of mercy;

(e) the operation of sections 1 to 8 of, and Schedule 1 to, the Justice and Security (Northern Ireland) Act 2007 and the operation of Part 1 of the Criminal Procedure and Investigations Act 1996 where a certificate under section 1 of the 2007 Act has been issued;

(f) in relation to the regulation of drugs or other substances through the criminal law (including offences, exceptions to offences, penalties, powers of arrest and detention, prosecutions and the treatment of offenders) or otherwise in relation to the prevention or detection of crime--

(i) the subject-matter of the Misuse of Drugs Act 1971;

(ii) the subject-matter of sections 12 and 13 of the Criminal Justice (International Co-operation) Act 1990;

(g) the National Crime Agency;

(h) in relation to prisons, the accommodation of persons in separated conditions on the grounds of security, safety or good order.

(2) In sub-paragraph (1)(h) "prisons" includes any institution for the detention of persons because of their involvement, or suspected involvement, in crime.

(3) This paragraph does not include any excepted matters or any matter within paragraph 10 of this Schedule.

## Scotland Act 1998

*Paragraph B8 of Schedule 5 to the Scotland Act 1998 would be amended by paragraph 37 of Schedule 10 to the Bill. Only paragraph B8 of Schedule 5 to the Scotland Act 1998 would be amended by the Bill and so only that paragraph is shown below.*

### **B8 National security, interception of communications, official secrets and terrorism**

National security.

The interception of communications; but not

(a) the interception of any communication made to or by a person detained at a place of detention, if the communication--

(i) is a written communication and is intercepted there, or

(ii) is intercepted in the course of its transmission by means of a private telecommunication system running there,

(b) the subject-matter of Part III of the Police Act 1997 (authorisation to interfere with property etc) or surveillance not involving interference with property.

The subject-matter of--

(a) the Official Secrets Acts 1911 and 1920, and

(b) the Official Secrets Act 1989, except so far as relating to any information, document or other article protected against disclosure by section 4(2) (crime) and not by any other provision of sections 1 to 4.

Special powers, and other special provisions, for dealing with terrorism.

#### *Interpretation*

"Place of detention" means a prison, young offenders institution, remand centre or legalised police cell (as those expressions are defined for the purposes of the Prisons (Scotland) Act 1989) or a hospital (within the meaning [given in section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003]; and "person detained", in relation to a hospital, means a person detained there under--

(a) section 24, 25 or 70 of the Mental Health (Scotland) Act 1984;

- (b) Part 6 of the Criminal Procedure (Scotland) Act 1995;
- (c) the Mental Health (Care and Treatment) (Scotland) Act 2003; or
- (d) regulations under--
  - (i) subsection (3) of section 116B of the Army Act 1955;
  - (ii) subsection (3) of section 116B of the Air Force Act 1955; or
  - (iii) section 63B of the Naval Discipline Act 1957.

"Private telecommunication system" has the meaning given in ~~section 2(1) of the Regulation of Investigatory Powers Act 2000~~ [section 223(14) of the Investigatory Powers Act 2016].

## Police Act 1997

*Part 3 of the Police Act 1997 would be amended by clauses 200, 206, 208 and 209, and paragraphs 3 to 6, 40 to 45, 49 to 56 and 68 to 75 of Schedule 10. Only Part 3 of the Police Act 1997 would be amended by the Bill and so only Part 3 is shown below.*

### Part 3 – AUTHORISATIONS OF ACTIONS IN RESPECT OF PROPERTY

#### ~~91 The Commissioners~~

~~(1) The Prime Minister, after consultation with the Scottish Ministers, shall appoint for the purposes of this Part--~~

~~(a) a Chief Commissioner, and~~

~~(b) such number of other Commissioners as the Prime Minister thinks fit.~~

~~(2) The persons appointed under subsection (1) shall be persons who hold or have held high judicial office within the meaning of Part 3 of the Constitutional Reform Act 2005 or are or have been members of the Judicial Committee of the Privy Council.~~

~~(3) Subject to subsections (4) to (7), each Commissioner shall hold and vacate office in accordance with the terms of his appointment.~~

~~(4) Each Commissioner shall be appointed for a term of three years.~~

~~(5) A person who ceases to be a Commissioner (otherwise than under subsection (7)) may be reappointed under this section.~~

~~(6) Subject to subsection (7), a Commissioner shall not be removed from office before the end of the term for which he is appointed unless--~~

~~(a) a resolution approving his removal has been passed by each House of Parliament; and~~

~~(b) a resolution approving his removal has been passed by the Scottish Parliament.~~

~~(7) A Commissioner may be removed from office by the Prime Minister if after his appointment--~~

~~(a) a bankruptcy order is made against him or his estate is sequestrated or he makes a composition or arrangement with, or grants a trust deed for, his creditors;~~

~~(b) a disqualification order under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002, or an order under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order), is made against him or his disqualification undertaking is accepted under section 7 or 8 of the Company Directors Disqualification Act 1986 or under the Company Directors Disqualification (Northern Ireland) Order 2002; or~~

~~(c) he is convicted in the United Kingdom, the Channel Islands or the Isle of Man of an offence and has passed on him a sentence of imprisonment (whether suspended or not).~~

~~(8) The Secretary of State shall pay to each Commissioner, other than a Commissioner carrying out functions as mentioned in subsection (8A), such allowances as the Secretary of State considers appropriate.~~

~~(8A) The Scottish Ministers shall pay to any Commissioner who carries out his functions under this Part wholly or mainly in Scotland such allowances as the Scottish Ministers consider appropriate.~~

~~(9) The Secretary of State shall, after consultation with the Chief Commissioner and subject to the approval of the Treasury as to numbers, provide the Commissioners and any Assistant Surveillance Commissioners holding office under section 63 of the Regulation of Investigatory Powers Act 2000, other than any Commissioner carrying out functions as mentioned in subsection (9A), with such staff as the Secretary of State considers necessary for the discharge of their functions.~~

~~(9A) The Scottish Ministers shall, after consultation with the Chief Commissioner, provide any Commissioner who carries out his functions under this Part wholly or mainly in Scotland with such staff as the Scottish Ministers consider necessary for the discharge of his functions.~~

~~(10) The decisions of the Chief Commissioner or, subject to section 104, any other Commissioner (including decisions as to his jurisdiction) shall not be subject to appeal or liable to be questioned in any court.~~

~~(11) Subsection (10) is not to be read as affecting the jurisdiction of the Tribunal conferred by section 65 of the Regulation of Investigatory Powers Act 2000 or section 23 of the Regulation of Investigatory Powers (Scotland) Act 2000.~~

## **92 Effect of authorisation under Part III**

No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorised by an authorisation having effect under this Part.

### 93 Authorisations to interfere with property etc

(1) Where subsection (2) applies, an authorising officer may authorise--

- (a) the taking of such action, in respect of such property in the relevant area, as he may specify,
- (ab) the taking of such action falling within subsection (1A), in respect of property outside the relevant area, as he may specify, or
- (b) the taking of such action in the relevant area as he may specify, in respect of wireless telegraphy.

(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 the Investigatory Powers Act 2016] 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 National Crime Agency officer, an officer of Revenue and Customs, an immigration officer or the chair of the Competition and Markets Authority with the omission of--

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

(2) This subsection applies where the authorising officer believes--

- (a) that it is necessary for the action specified to be taken for the purpose of preventing or detecting serious crime, and
- (b) that the taking of the action is proportionate to what the action seeks to achieve.

(2A) Subsection (2) applies where the authorising officer is the Chief Constable or the Deputy Chief Constable of the Police Service of Northern Ireland as if the reference in subsection (2)(a) to preventing or detecting serious crime included a reference to the interests of national security.

(2AA) Where the authorising officer is the chair of the Competition and Markets Authority, the only purpose falling within subsection (2)(a) is the purpose of preventing or detecting an offence under section 188 of the Enterprise Act 2002.

(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.

(3) An authorising officer shall not give an authorisation under this section except on an application made--

(za) if the authorising officer is within subsection (5)(a) to (c)--

(i) by a member of the officer's police force; or

(ii) in a case where the chief officer of police of that force ("the authorising force") has made an agreement under section 23(1) of the Police Act 1996 with the chief officer of police of one or more other police forces, by a member of a collaborative force;

(zb) if the authorising officer is within subsection (5)(d), by a constable of the Police Service of Scotland;

(a) if the authorising officer is within subsection (5)(e), (ea) or (ee), by a member of his police force,

(aa) if the authorising officer is within subsection (5)(eb) to (ed), by a member, as the case may be, of the Royal Navy Police, the Royal Military Police or the Royal Air Force Police;

(b) if the authorising officer is within subsection (5)(f), by a National Crime Agency officer,

(d) if the authorising officer is within subsection (5)(h), by an officer of Revenue and Customs, . . .

(da) if the authorising officer is within subsection (5)(ha), by an immigration officer;

(e) if the authorising officer is within subsection (5)(i), by an officer of the Competition and Markets Authority,

(ea) if the authorising officer is within subsection (5)(ia), by a staff officer of the Police Investigations and Review Commissioner,

(f) . . . .

(3A) For the purposes of subsection (3)(za)(ii)--

(a) a police force is a collaborative force if--

(i) its chief officer of police is a party to the agreement mentioned in that provision; and

(ii) its members are permitted by the terms of the agreement to make applications for authorisations under this section to the authorising officer of the authorising force; and

(b) a reference to a police force is to the following--

- (i) any police force maintained under section 2 of the Police Act 1996 (police forces in England and Wales outside London);
- (ii) the metropolitan police force; and
- (iii) the City of London police force.

(3ZA) An authorisation under this section may be given by the authorising officer within subsection (5)(ia) only where it relates to the taking of action in pursuance of paragraph (b)(i) of section 33A of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

(3B) . . .

(3C) . . .

(3D) . . .

(3E) . . .

(4) For the purposes of subsection (2), conduct which constitutes one or more offences shall be regarded as serious crime if, and only if,--

- (a) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose, or
- (b) the offence or one of the offences is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more,

and, where the authorising officer is within subsection (5)(h), the conduct relates to an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979 or, where the authorising officer is within subsection (5)(ha), any of the offences is an immigration or nationality offence.

(5) In this section "authorising officer" means--

- (a) the chief constable of a police force maintained under section 2 of the Police Act 1996 (maintenance of police forces for areas in England and Wales except London);
- (b) the Commissioner, or an Assistant Commissioner, of Police of the Metropolis;
- (c) the Commissioner of Police for the City of London;

- (d) the chief constable of the Police Service of Scotland, or any deputy chief constable or assistant chief constable of the Police Service of Scotland who is designated for the purposes of this paragraph by the chief constable;
  - (e) the Chief Constable or a Deputy Chief Constable of the Police Service of Northern Ireland;
  - (ea) the Chief Constable of the Ministry of Defence Police;
  - (eb) the Provost Marshal of the Royal Navy Police;
  - (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;
  - (f) the Director General of the National Crime Agency, or any other National Crime Agency officer who is designated for the purposes of this paragraph by that Director General;
  - (h) an officer of Revenue and Customs who is a senior official within the meaning of the Regulation of Investigatory Powers Act 2000 and who is designated for the purposes of this paragraph by the Commissioners for Her Majesty's Revenue and Customs; . . .
  - (ha) an immigration officer who is a senior official within the meaning of the Regulation of Investigatory Powers Act 2000 and who is designated for the purposes of this paragraph by the Secretary of State;
  - (i) the chair of the Competition and Markets Authority;
  - (ia) the Police Investigations and Review Commissioner;
  - (j) . . . .
- (6) In this section "relevant area"--
- (a) in relation to a person within paragraph (a), (b) or (c) of subsection (5) to whom an application is made by virtue of subsection (3)(za)(i), means the area in England and Wales for which his police force is maintained;
  - (aa) in relation to a person within any of those paragraphs to whom an application is made by virtue of subsection (3)(za)(ii), means the area in England and Wales--
    - (i) for which any collaborative force (within the meaning of subsection (3A)) is maintained; and

(ii) which is specified in relation to members of that force in the agreement mentioned in subsection (3)(za)(ii);

(b) in relation to a person within paragraph (d) or (ia) of subsection (5), means Scotland;

(c) in relation to a person within paragraph (e) of that subsection, means Northern Ireland;

(ca) in relation to a person within paragraph (ea), means any place where, under section 2 of the 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;

(cc) . . .

(d) . . .

(e) . . . . .

(f) . . .

and in each case includes the adjacent United Kingdom waters.

(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 who is subject to service law or is a civilian subject to service discipline; or

(b) the action is taken in relation to the use of wireless telegraphy by such a person.

(6B) In subsection (6A) "subject to service law" and "civilian subject to service discipline" have the same meanings as in the Armed Forces Act 2006.

(6C) For the purposes of this section, an offence is an immigration or nationality offence if conduct constituting the offence--

(a) relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement), or

(b) is undertaken for the purposes of, or otherwise in relation to, any of these enactments--

- (i) the British Nationality Act 1981;
- (ii) the Hong Kong Act 1985;
- (iii) the Hong Kong (War Wives and Widows) Act 1996;
- (iv) the British Nationality (Hong Kong) Act 1997;
- (v) the British Overseas Territories Act 2002;
- (vi) an instrument made under any of those Acts.

(7) The powers conferred by, or by virtue of, this section are additional to any other powers which a person has as a constable either at common law or under or by virtue of any other enactment and are not to be taken to affect any of those other powers.

#### **94 Authorisations given in absence of authorising officer**

(1) Subsection (2) applies where it is not reasonably practicable for an authorising officer to consider an application for an authorisation under section 93 and--

(a) if the authorising officer is within paragraph (b), (e) or (f) of section 93(5), it is also not reasonably practicable for the application to be considered by any of the other persons within the paragraph concerned; or . . .

(b) if the authorising officer is within paragraph (a) or (c) of section 93(5), it is also not reasonably practicable for the application to be considered by his designated deputy . . .

(c) . . . .

(2) Where this subsection applies, the powers conferred on the authorising officer by section 93 may, in an urgent case, be exercised--

(a) where the authorising officer is within paragraph (a) . . . of subsection (5) of that section, by a person holding the rank of assistant chief constable in his force;

(b) where the authorising officer is within paragraph (b) of that subsection, by a person holding the rank of commander in the metropolitan police force;

(c) where the authorising officer is within paragraph (c) of that subsection, by a person holding the rank of commander in the City of London police force;

(d) where the authorising officer is within paragraph (e) of that subsection, by a person holding the rank of assistant chief constable in the Police Service of Northern Ireland;

(da) where the authorising officer is within paragraph (ea) of that subsection, by a person holding the rank of deputy or assistant chief constable in the Ministry of Defence Police;

(db) where the authorising officer is within paragraph (eb) of that subsection, by a person holding the position of assistant Provost Marshal in the Royal Navy Police;

(dc) where the authorising officer is within paragraph (ec) or (ed) of that subsection, by a person holding the position of deputy Provost Marshal in the Royal Military Police or, as the case may be, in the Royal Air Force Police;

(dd) where the authorising officer is within paragraph (ee) of that subsection, by a person holding the rank of deputy or assistant chief constable in the British Transport Police;

(e) where the authorising officer is within paragraph (f) of that subsection, by a person designated for the purposes of this section by the Director General of the National Crime Agency;

(f) where the authorising officer is within paragraph (h) of that subsection, by an officer of Revenue and Customs who is a senior official within the meaning of the Regulation of Investigatory Powers Act 2000 and who is designated by the Commissioners for Her Majesty's Revenue and Customs for the purposes of this section;

(fa) where the authorising officer is within paragraph (ha) of that subsection, by a senior official (within the meaning of the Regulation of Investigatory Powers Act 2000) in the department of the Secretary of State by whom functions relating to immigration are exercisable who is designated by the Secretary of State for the purposes of this section;

(g) where the authorising officer is within paragraph (i) of that subsection, by an officer of the Competition and Markets Authority designated by it for the purposes of this section;

(ga) where the authorising officer is within paragraph (ia) of that subsection, by a staff officer of the Police Investigations and Review Commissioner who is designated by the Commissioner for the purposes of this section;

(h) . . . .

(3) . . .

(4) In subsection (1), "designated deputy"--

(a) in the case of an authorising officer within paragraph (a) of section 93(5), means--

(i) the person who is the appropriate deputy chief constable for the purposes of section 12A(1) of the Police Act 1996, or

(ii) the person holding the rank of assistant chief constable designated to act under section 12A(2) of that Act;

(aa) . . .

(b) in the case of an authorising officer within paragraph (c) of section 93(5), means the person authorised to act . . . under section 25 of the City of London Police Act 1839; . . .

(c) . . . . .

(d) . . . .

(5) . . .

(6) . . .

(7) . . .

## **95 Authorisations: form and duration etc**

(1) An authorisation shall be in writing, except that in an urgent case an authorisation (other than one given by virtue of section 94) may be given orally.

(2) An authorisation shall, unless renewed under subsection (3), cease to have effect--

(a) if given orally or by virtue of section 94, at the end of the period of 72 hours beginning with the time when it took effect;

(b) in any other case, at the end of the period of three months beginning with the day on which it took effect.

(3) If at any time before an authorisation would cease to have effect the authorising officer who gave the authorisation, or in whose absence it was given, considers it necessary for the authorisation to continue to have effect for the purpose for which it was issued, he may, in writing, renew it for a period of three months beginning with the day on which it would cease to have effect.

(4) A person shall cancel an authorisation given by him if satisfied that the authorisation is one in relation to which the requirements of paragraphs (a) and (b) of section 93(2) are no longer satisfied.

(5) An authorising officer shall cancel an authorisation given in his absence if satisfied that the authorisation is one in relation to which the requirements of paragraphs (a) and (b) of section 93(2) are no longer satisfied.

(6) If the authorising officer who gave the authorisation is within paragraph (b), (d), (e) or (f) of section 93(5), the power conferred on that person by subsections (3) and (4) above shall also be exercisable by each of the other persons within the paragraph concerned.

(7) Nothing in this section shall prevent a designated deputy from exercising the powers conferred on an authorising officer within paragraph (a), (c), (d) or (j) or (c) of section 93(5) by subsections (3), (4) and (5) above.

## **96 Notification of authorisations etc**

(1) Where a person gives, renews or cancels an authorisation, he shall, as soon as is reasonably practicable and in accordance with arrangements made by the ~~Chief Commissioner~~ [Investigatory Powers Commissioner], give notice in writing that he has done so to ~~a Commissioner appointed under section 91(1)(b)~~ [a Judicial Commissioner].

(2) Subject to subsection (3), a notice under this section shall specify such matters as the Secretary of State may by order prescribe.

(3) A notice under this section of the giving or renewal of an authorisation shall specify--

(a) whether section 97 applies to the authorisation or renewal, and

(b) where that section does not apply by virtue of subsection (3) of that section, the grounds on which the case is believed to be one of urgency.

(4) Where a notice is given to ~~a Commissioner~~ [a Judicial Commissioner] under this section, he shall, as soon as is reasonably practicable, scrutinise the notice.

(5) An order under subsection (2) shall be made by statutory instrument.

(6) A statutory instrument which contains an order under subsection (2) shall not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

## 97 Authorisations requiring approval

- (1) An authorisation to which this section applies shall not take effect until--
  - (a) it has been approved in accordance with this section by ~~a Commissioner appointed under section 91(1)(b)~~ [a Judicial Commissioner], and
  - (b) the person who gave the authorisation has been notified under subsection (4).
- (2) Subject to subsection (3), this section applies to an authorisation if, at the time it is given, the person who gives it believes--
  - (a) that any of the property specified in the authorisation--
    - (i) is used wholly or mainly as a dwelling or as a bedroom in a hotel, or
    - (ii) constitutes office premises, or
  - (b) that the action authorised by it is likely to result in any person acquiring knowledge of--
    - (i) matters subject to legal privilege,
    - (ii) confidential personal information, or
    - (iii) confidential journalistic material.
- (3) This section does not apply to an authorisation where the person who gives it believes that the case is one of urgency.
- (4) Where ~~a Commissioner~~ [a Judicial Commissioner] receives a notice under section 96 which specifies that this section applies to the authorisation, he shall as soon as is reasonably practicable--
  - (a) decide whether to approve the authorisation or refuse approval, and
  - (b) give written notice of his decision to the person who gave the authorisation.
- (5) ~~A Commissioner~~ [a Judicial Commissioner] shall approve an authorisation if, and only if, he is satisfied that there are reasonable grounds for believing the matters specified in section 93(2).
- (6) Where ~~a Commissioner~~ [a Judicial Commissioner] refuses to approve an authorisation, he shall, as soon as is reasonably practicable, make a report of his findings to the authorising officer who gave it or in whose absence it was given . . .

..

(6A) The reference in subsection (6) to the authorising officer who gave the authorisation or in whose absence it was given shall be construed, in the case of an authorisation given by or in the absence of a person within paragraph (b) or (e) of section 93(5), as a reference to the Commissioner of Police or, as the case may be, Chief Constable mentioned in the paragraph concerned.

(6B) The reference in subsection (6) to the authorising officer who gave the authorisation or in whose absence it was given shall be construed--

(a) in the case of an authorisation given by a person within paragraph (f) of section 93(5), as a reference to that person, and

(b) in the case of an authorisation given in the absence of such a person, as a reference to a National Crime Agency officer who is designated for the purposes of this section by the Director General of that Agency.

(7) This section shall apply in relation to a renewal of an authorisation as it applies in relation to an authorisation (the references in subsection (2)(a) and (b) to the authorisation being construed as references to the authorisation renewed).

(8) In this section--

"office premises" has the meaning given in section 1(2) of the Offices, Shops and Railway Premises Act 1963;

"hotel" means premises used for the reception of guests who desire to sleep in the premises.

## **98 Matters subject to legal privilege**

(1) Subject to subsection (5) below, in section 97 "matters subject to legal privilege" means matters to which subsection (2), (3) or (4) below applies.

(2) This subsection applies to communications between a professional legal adviser and--

(a) his client, or

(b) any person representing his client,

which are made in connection with the giving of legal advice to the client.

(3) This subsection applies to communications--

(a) between a professional legal adviser and his client or any person representing his client, or

(b) between a professional legal adviser or his client or any such representative and any other person,

which are made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

(4) This subsection applies to items enclosed with or referred to in communications of the kind mentioned in subsection (2) or (3) and made--

(a) in connection with the giving of legal advice, or

(b) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

(5) For the purposes of section 97--

(a) communications and items are not matters subject to legal privilege when they are in the possession of a person who is not entitled to possession of them, and

(b) communications and items held, or oral communications made, with the intention of furthering a criminal purpose are not matters subject to legal privilege.

## **99 Confidential personal information**

(1) In section 97 "confidential personal information" means--

(a) personal information which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office, and which he holds in confidence, and

(b) communications as a result of which personal information--

(i) is acquired or created as mentioned in paragraph (a), and

(ii) is held in confidence.

(2) For the purposes of this section "personal information" means information concerning an individual (whether living or dead) who can be identified from it and relating--

(a) to his physical or mental health, or

(b) to spiritual counselling or assistance given or to be given to him.

(3) A person holds information in confidence for the purposes of this section if he holds it subject--

- (a) to an express or implied undertaking to hold it in confidence, or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment (including an enactment contained in an Act passed after this Act).

## **100 Confidential journalistic material**

(1) In section 97 "confidential journalistic material" means--

- (a) material acquired or created for the purposes of journalism which--
  - (i) is in the possession of persons who acquired or created it for those purposes,
  - (ii) is held subject to an undertaking, restriction or obligation of the kind mentioned in section 99(3), and
  - (iii) has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism, and
- (b) communications as a result of which information is acquired for the purposes of journalism and held as mentioned in paragraph (a)(ii).

(2) For the purposes of subsection (1), a person who receives material, or acquires information, from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

**101** ...

...

**102** ...

...

## **103 Quashing of authorisations etc**

(1) Where, at any time, ~~a Commissioner appointed under section 91(1)(b)~~ [a **Judicial Commissioner**] is satisfied that, at the time an authorisation was given or renewed, there were no reasonable grounds for believing the matters specified in section 93(2), he may quash the authorisation or, as the case may be, renewal.

(2) Where, in the case of an authorisation or renewal to which section 97 does not apply, ~~a Commissioner appointed under section 91(1)(b)~~ [a Judicial Commissioner] is at any time satisfied that, at the time the authorisation was given or, as the case may be, renewed,--

(a) there were reasonable grounds for believing any of the matters specified in subsection (2) of section 97, and

(b) there were no reasonable grounds for believing the case to be one of urgency for the purposes of subsection (3) of that section,

he may quash the authorisation or, as the case may be, renewal.

(3) Where a Commissioner quashes an authorisation or renewal under subsection (1) or (2), he may order the destruction of any records relating to information obtained by virtue of the authorisation (or, in the case of a renewal, relating wholly or partly to information so obtained after the renewal) other than records required for pending criminal or civil proceedings.

(4) If ~~a Commissioner appointed under section 91(1)(b)~~ [a Judicial Commissioner] is satisfied that, at any time after an authorisation was given or, in the case of an authorisation renewed under section 95, after it was renewed, there were no reasonable grounds for believing the matters specified in section 93(2), he may cancel the authorisation.

(5) Where--

(a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (1) or (2)), and

(b) ~~a Commissioner appointed under section 91(1)(b)~~ [a Judicial Commissioner] is satisfied that, at any time during the period of the authorisation, there were no reasonable grounds for believing the matters specified in section 93(2),

he may order the destruction of any records relating, wholly or partly, to information which was obtained by virtue of the authorisation after that time (other than records required for pending criminal or civil proceedings).

(6) Where a Commissioner exercises his powers under subsection (1), (2) or (4), he shall, if he is satisfied that there are reasonable grounds for doing so, order that the authorisation shall be effective, for such period as he shall specify, so far as it authorises the taking of action to retrieve anything left on property in accordance with the authorisation.

(7) Where ~~a Commissioner~~ [a Judicial Commissioner] exercises a power conferred by this section, he shall, as soon as is reasonably practicable, make a report of his findings--

(a) to the authorising officer who gave the authorisation or in whose absence it was given, and

(b) to the ~~Chief Commissioner~~ [Investigatory Powers Commissioner];

and subsection (6A) of section 97 shall apply for the purposes of this subsection as it applies for the purposes of subsection (6) of that section.

(8) Where--

(a) a decision is made under subsection (1) or (2) and an order for the destruction of records is made under subsection (3), or

(b) a decision to order the destruction of records is made under subsection (5),

the order shall not become operative until ~~the period~~ [any period] for appealing against the decision has expired and, where an appeal is made, a decision dismissing it has been made by the ~~Chief Commissioner~~ [Investigatory Powers Commissioner].

(9) ~~A Commissioner~~ [A Judicial Commissioner] may exercise any of the powers conferred by this section notwithstanding any approval given under section 97.

#### **104 Appeals by authorising officers**

(1) An authorising officer who gives an authorisation, or in whose absence it is given, may, within the prescribed period, appeal to the ~~Chief Commissioner~~ [Investigatory Powers Commissioner (except where the original decision was made by that Commissioner)] against--

(a) any refusal to approve the authorisation or any renewal of it under section 97;

(b) any decision to quash the authorisation, or any renewal of it, under subsection (1) of section 103;

(c) any decision to quash the authorisation, or any renewal of it, under subsection (2) of that section;

(d) any decision to cancel the authorisation under subsection (4) of that section;

(e) any decision to order the destruction of records under subsection (5) of that section;

(f) any refusal to make an order under subsection (6) of that section;

(g) . . . .

(2) In subsection (1), "the prescribed period" means the period of seven days beginning with the day on which the refusal, decision or, as the case may be, determination appealed against is reported to the authorising officer.

(3) In determining an appeal within subsection (1)(a), the ~~Chief Commissioner~~ [Investigatory Powers Commissioner] shall, if he is satisfied that there are reasonable grounds for believing the matters specified in section 93(2), allow the appeal and direct ~~the Commissioner~~ [the Judicial Commissioner concerned] to approve the authorisation or renewal under that section.

(4) In determining--

(a) an appeal within subsection (1)(b), . . .

(b) . . .

the ~~Chief Commissioner~~ [Investigatory Powers Commissioner] shall allow the appeal unless he is satisfied that, at the time the authorisation was given or, as the case may be, renewed there were no reasonable grounds for believing the matters specified in section 93(2).

(5) In determining--

(a) an appeal within subsection (1)(c), . . .

(b) . . .

the ~~Chief Commissioner~~ [Investigatory Powers Commissioner] shall allow the appeal unless he is satisfied as mentioned in section 103(2).

(6) In determining--

(a) an appeal within subsection (1)(d) or (e), . . .

(b) . . .

the ~~Chief Commissioner~~ [Investigatory Powers Commissioner] shall allow the appeal unless he is satisfied that at the time to which the decision relates there were no reasonable grounds for believing the matters specified in section 93(2).

(7) In determining an appeal within subsection (1)(f), the ~~Chief Commissioner~~ [Investigatory Powers Commissioner] shall allow the appeal and order that the authorisation shall be effective to the extent mentioned in section 103(6), for such period as he shall specify, if he is satisfied that there are reasonable grounds for making such an order.

(8) Where an appeal is allowed under this section, the ~~Chief Commissioner~~ [Investigatory Powers Commissioner] shall--

(a) in the case of an appeal within subsection (1)(b) or (c), also quash any order made by ~~the Commissioner~~ [the Judicial Commissioner concerned] to destroy records relating to information obtained by virtue of the authorisation concerned, . . .

(b) . . .

## 105 Appeals by authorising officers: supplementary

(1) Where the ~~Chief Commissioner~~ [Investigatory Powers Commissioner] determines an appeal under section 104--

(a) he shall give notice of his determination--

(i) to the authorising officer concerned, and

(ii) to ~~the Commissioner~~ [the Judicial Commissioner] against whose refusal, decision or determination the appeal was made, . . .

(iii) . . .

(b) if he dismisses the appeal, he shall make a report of his findings--

(i) to the authorising officer concerned,

(ii) to ~~the Commissioner~~ [the Judicial Commissioner] against whose refusal, decision or determination the appeal was made, and

(iii) under ~~section 107(2)~~ [section 201 of the Investigatory Powers Act 2016], to the Prime Minister and the Scottish Ministers.

(2) Subject to subsection (1)(b), the ~~Chief Commissioner~~ [Investigatory Powers Commissioner] shall not give any reasons for a determination under section 104.

(3) Nothing in section 104 shall prevent a designated deputy from exercising the powers conferred by subsection (1) of that section on an authorising officer within paragraph (a) or (c) of section 93(5).

106 . . .

. . .

## ~~107 Supplementary provisions relating to Commissioners~~

~~(1) — The Chief Commissioner shall keep under review the performance of functions under this Part.~~

~~(2) — The Chief Commissioner shall make an annual report on the matters with which he is concerned to the Prime Minister and to the Scottish Ministers and may at any time report to him or them (as the case may require) on anything relating to any of those matters.~~

~~(3) — The Prime Minister shall lay before each House of Parliament a copy of each annual report made by the Chief Commissioner under subsection (2) together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (4) below.~~

~~(3A) — The Scottish Ministers shall lay before the Scottish Parliament a copy of each annual report made by the Chief Commissioner under subsection (2); together with a statement as to whether any matter has been excluded from that copy in pursuance of subsection (4) below.~~

~~(4) — The Prime Minister may exclude a matter from the copy of a report as laid before each House of Parliament, if it appears to him, after consultation with the Chief Commissioner and the Scottish Ministers, that the publication of that matter in the report would be prejudicial to any of the purposes for which authorisations may be given or granted under this Part of this Act 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 or to the discharge of—~~

~~(a) — the functions of any local policing body or the Scottish Police Authority;~~

~~(b) — the functions of the National Crime Agency;~~

~~(bza) — the functions of the Police Investigations and Review Commissioner under section 33A(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, or~~

~~(ba) — ...~~

~~(c) — the duties of the Commissioners for Her Majesty's Revenue and Customs;~~

~~(d) — the functions of the Secretary of State relating to immigration.~~

~~(5) — Any person having functions under this Part, and any person taking action in relation to which an authorisation was given, shall comply with any request of a Commissioner for documents or information required by him for the purpose of enabling him to discharge his functions.~~

~~(5A) — It shall be the duty of—~~

~~(a) — every person by whom, or on whose application, there has been given or granted any authorisation the function of giving or granting which is subject to review by the Chief Commissioner,~~

~~(b) — every person who has engaged in conduct with the authority of such an authorisation,~~

~~(c) — every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (a),~~

~~(d) — every person who holds or has held any office, rank or position with any public authority for whose benefit (within the meaning of Part II of the Regulation of Investigatory Powers Act 2000) activities which are or may be subject to any such review have been or may be carried out, and~~

~~(e) — every person to whom a notice under section 49 of the Regulation of Investigatory Powers Act 2000 (notices imposing a disclosure requirement in respect of information protected by a key) has been given in relation to any information obtained by conduct to which such an authorisation relates,~~

~~to disclose or provide to the Chief Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.~~

~~(5B) — It shall be the duty of every Commissioner to give the tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000 all such assistance (including his opinion as to any issue falling to be determined by that tribunal) as that tribunal may require—~~

~~(a) — in connection with the investigation of any matter by that tribunal; or~~

~~(b) — otherwise for the purposes of that tribunal's consideration or determination of any matter.~~

~~(5C) — In this section "public authority" means any public authority within the meaning of section 6 of the Human Rights Act 1998 (acts of public authorities) other than a court or tribunal.~~

~~(6) — ...~~

## **108 Interpretation of Part III**

(1) In this Part--

"Assistant Commissioner of Police of the Metropolis" includes the Deputy Commissioner of Police of the Metropolis;

"authorisation" means an authorisation under section 93;

"authorising officer" has the meaning given by section 93(5);

"criminal proceedings" includes--

proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006;

. . .

"designated deputy" has the meaning given in section 94(4);

["the Investigatory Powers Commissioner" and "Judicial Commissioner" have the same meanings as in the Investigatory Powers Act 2016 (see section 225(1) of that Act);]

"United Kingdom waters" has the meaning given in section 30(5) of the Police Act 1996; and

"wireless telegraphy" has the same meaning as in the Wireless Telegraphy Act 2006 and, in relation to wireless telegraphy, "interfere" has the same meaning as in that Act.

(2) Where, under this Part, notice of any matter is required to be given in writing, the notice may be transmitted by electronic means.

(3) For the purposes of this Part, an authorisation (or renewal) given--

(a) by the designated deputy of an authorising officer, or

(b) by a person on whom an authorising officer's powers are conferred by section 94,

shall be treated as an authorisation (or renewal) given in the absence of the authorising officer concerned; and references to the authorising officer in whose absence an authorisation (or renewal) was given shall be construed accordingly.

## **Criminal Procedure and Investigations Act 1996**

*Sections 3, 7A, 8 and 23 of the Criminal Procedure and Investigations Act 1996 would be amended by paragraph 36 of Schedule 10 to the Bill. Only those sections would be amended by the Bill and accordingly only those sections are shown below.*

### **3 Initial duty of prosecutor to disclose**

(1) The prosecutor must--

(a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which [might reasonably be considered capable of undermining] the case for the prosecution against the accused [or of assisting the case for the accused], or

(b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a).

(2) For the purposes of this section prosecution material is material--

(a) which is in the prosecutor's possession, and came into his possession in connection with the case for the prosecution against the accused, or

(b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused.

(3) Where material consists of information which has been recorded in any form the prosecutor discloses it for the purposes of this section--

(a) by securing that a copy is made of it and that the copy is given to the accused, or

(b) if in the prosecutor's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so;

and a copy may be in such a form as the prosecutor thinks fit and need not be in the same form as that in which the information has already been recorded.

(4) Where material consists of information which has not been recorded the prosecutor discloses it for the purposes of this section by securing that it is recorded in such form as he thinks fit and--

(a) by securing that a copy is made of it and that the copy is given to the accused, or

- (b) if in the prosecutor's opinion that is not practicable or not desirable, by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (5) Where material does not consist of information the prosecutor discloses it for the purposes of this section by allowing the accused to inspect it at a reasonable time and a reasonable place or by taking steps to secure that he is allowed to do so.
- (6) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.
- (7) Material must not be disclosed under this section to the extent that [it is material the disclosure of which is prohibited by ~~section 17 of the Regulation of Investigatory Powers Act 2000~~ [section 48 of the Investigatory Powers Act 2016].
- (8) The prosecutor must act under this section during the period which, by virtue of section 12, is the relevant period for this section.

## **7A Continuing duty of prosecutor to disclose**

- (1) This section applies at all times--
- (a) after the prosecutor has complied with section 3 or purported to comply with it, and
- (b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.
- (2) The prosecutor must keep under review the question whether at any given time (and, in particular, following the giving of a defence statement) there is prosecution material which--
- (a) might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, and
- (b) has not been disclosed to the accused.
- (3) If at any time there is any such material as is mentioned in subsection (2) the prosecutor must disclose it to the accused as soon as is reasonably practicable (or within the period mentioned in subsection (5)(a), where that applies).
- (4) In applying subsection (2) by reference to any given time the state of affairs at that time (including the case for the prosecution as it stands at that time) must be taken into account.

- (5) Where the accused gives a defence statement under section 5, 6 or 6B--
- (a) if as a result of that statement the prosecutor is required by this section to make any disclosure, or further disclosure, he must do so during the period which, by virtue of section 12, is the relevant period for this section;
  - (b) if the prosecutor considers that he is not so required, he must during that period give to the accused a written statement to that effect.
- (6) For the purposes of this section prosecution material is material--
- (a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused, or
  - (b) which, in pursuance of a code operative under Part 2, he has inspected in connection with the case for the prosecution against the accused.
- (7) Subsections (3) to (5) of section 3 (method by which prosecutor discloses) apply for the purposes of this section as they apply for the purposes of that.
- (8) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.
- (9) Material must not be disclosed under this section to the extent that it is material the disclosure of which is prohibited by ~~section 17 of the Regulation of Investigatory Powers Act 2000~~ [section 48 of the Investigatory Powers Act 2016].

## **8 Application by accused for disclosure**

- (1) This section applies where the accused has given a defence statement under section 5, 6 or 6B and the prosecutor has complied with section 7A(5) or has purported to comply with it or has failed to comply with it.
- (2) If the accused has at any time reasonable cause to believe that there is prosecution material which is required by section 7A to be disclosed to him and has not been, he may apply to the court for an order requiring the prosecutor to disclose it to him.]
- (3) For the purposes of this section prosecution material is material--
- (a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused,
  - (b) which, in pursuance of a code operative under Part II, he has inspected in connection with the case for the prosecution against the accused, or
  - (c) which falls within subsection (4).

(4) Material falls within this subsection if in pursuance of a code operative under Part II the prosecutor must, if he asks for the material, be given a copy of it or be allowed to inspect it in connection with the case for the prosecution against the accused.

(5) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

(6) Material must not be disclosed under this section to the extent that [it is material the disclosure of which is prohibited by ~~section 17 of the Regulation of Investigatory Powers Act 2000~~ [section 48 of the Investigatory Powers Act 2016].

### **23 Code of practice**

(1) The Secretary of State shall prepare a code of practice containing provisions designed to secure--

(a) that where a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of inquiry are pursued;

(b) that information which is obtained in the course of a criminal investigation and may be relevant to the investigation is recorded;

(c) that any record of such information is retained;

(d) that any other material which is obtained in the course of a criminal investigation and may be relevant to the investigation is retained;

(e) that information falling within paragraph (b) and material falling within paragraph (d) is revealed to a person who is involved in the prosecution of criminal proceedings arising out of or relating to the investigation and who is identified in accordance with prescribed provisions;

(f) that where such a person inspects information or other material in pursuance of a requirement that it be revealed to him, and he requests that it be disclosed to the accused, the accused is allowed to inspect it or is given a copy of it;

(g) that where such a person is given a document indicating the nature of information or other material in pursuance of a requirement that it be revealed to him, and he requests that it be disclosed to the accused, the accused is allowed to inspect it or is given a copy of it;

(h) that the person who is to allow the accused to inspect information or other material or to give him a copy of it shall decide which of those (inspecting or giving a copy) is appropriate;

(i) that where the accused is allowed to inspect material as mentioned in paragraph (f) or (g) and he requests a copy, he is given one unless the person allowing the inspection is of opinion that it is not practicable or not desirable to give him one;

(j) that a person mentioned in paragraph (e) is given a written statement that prescribed activities which the code requires have been carried out.

(2) The code may include provision--

(a) that a police officer identified in accordance with prescribed provisions must carry out a prescribed activity which the code requires;

(b) that a police officer so identified must take steps to secure the carrying out by a person (whether or not a police officer) of a prescribed activity which the code requires;

(c) that a duty must be discharged by different people in succession in prescribed circumstances (as where a person dies or retires).

(3) The code may include provision about the form in which information is to be recorded.

(4) The code may include provision about the manner in which and the period for which--

(a) a record of information is to be retained, and

(b) any other material is to be retained;

and if a person is charged with an offence the period may extend beyond a conviction or an acquittal.

(5) The code may include provision about the time when, the form in which, the way in which, and the extent to which, information or any other material is to be revealed to the person mentioned in subsection (1)(e).

~~(6) The code must be so framed that it does not apply to material intercepted in obedience to a warrant issued under section 2 of the Interception of Communications Act 1985 [or under the authority of an interception warrant under section 5 of the Regulation of Investigatory Powers Act 2000.~~

~~[(6) The code must be so framed that it does not apply to any of the following—~~

- (a) material intercepted in obedience to a warrant issued under section 2 of the Interception of Communications Act 1985;
- (b) material intercepted under the authority of an interception warrant under section 5 of the Regulation of Investigatory Powers Act 2000;
- (c) material obtained under the authority of a warrant issued under Chapter 1 of Part 2 of the Investigatory Powers Act 2016;
- (d) material obtained under the authority of a warrant issued under Chapter 1 of Part 6 of that Act.]

(7) The code may--

- (a) make different provision in relation to different cases or descriptions of case;
- (b) contain exceptions as regards prescribed cases or descriptions of case.

(8) In this section "prescribed" means prescribed by the code.

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## Intelligence Services Act 1994

*Sections 3 and 5 of the Intelligence Services Act 1994 are amended by clause 215 of the Bill. Only sections 3 and 5 of the Intelligence Services Act 1994 would be amended by the Bill and accordingly only those sections are shown below.*

### 3 The Government Communications Headquarters

(1) There shall continue to be a Government Communications Headquarters under the authority of the Secretary of State; and, subject to subsection (2) below, its functions shall be--

- (a) to monitor[, make use of,] or interfere with electromagnetic, acoustic and other emissions and any equipment producing such emissions and to obtain and provide information derived from or related to such emissions or equipment and from encrypted material; and
- (b) to provide advice and assistance about--
  - (i) languages, including terminology used for technical matters, and
  - (ii) cryptography and other matters relating to the protection of information and other material,

to the armed forces of the Crown, to Her Majesty's Government in the United Kingdom or to a Northern Ireland Department ~~or to any other organisation which is determined for the purposes of this section in such manner as may be specified by the Prime Minister~~ [or, in such cases as it considers appropriate, to other organisations or persons, or to the general public, in the United Kingdom or elsewhere].

(2) The functions referred to in subsection (1)(a) above shall be exercisable only--

- (a) in the interests of national security, with particular reference to the defence and foreign policies of Her Majesty's Government in the United Kingdom; or
- (b) in the interests of the economic well-being of the United Kingdom in relation to the actions or intentions of persons outside the British Islands; or
- (c) in support of the prevention or detection of serious crime.

(3) In this Act the expression "GCHQ" refers to the Government Communications Headquarters and to any unit or part of a unit of the armed forces

of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

## 5 Warrants: general

(1) No entry on or interference with property or with wireless telegraphy shall be unlawful if it is authorised by a warrant issued by the Secretary of State under this section.

(2) The Secretary of State may, on an application made by the Security Service, the Intelligence Service or GCHQ, issue a warrant under this section authorising the taking, ~~subject to subsection (3) below,~~ of such action as is specified in the warrant in respect of any property so specified or in respect of wireless telegraphy so specified if the Secretary of State--

(a) thinks it necessary for the action to be taken [for the purpose of] assisting, as the case may be,--

(i) the Security Service in carrying out any of its functions under the 1989 Act; or

(ii) the Intelligence Service in carrying out any of its functions under section 1 above; or

(iii) GCHQ in carrying out any function which falls within section 3(1)(a) above; and

(b) is satisfied that the taking of the action is proportionate to what the action seeks to achieve; and

(c) is satisfied that satisfactory arrangements are in force under section 2(2)(a) of the 1989 Act (duties of the Director-General of the Security Service), section 2(2)(a) above or section 4(2)(a) above with respect to the disclosure of information obtained by virtue of this section and that any information obtained under the warrant will be subject to those arrangements.

(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) A warrant issued on the application of the Intelligence Service or GCHQ for the purposes of the exercise of their functions by virtue of section 1(2)(c) or 3(2)(c) above may not relate to property in the British Islands.~~

(3A) A warrant issued on the application of the Security Service for the purposes of the exercise of their function under section 1(4) of the Security Service Act 1989[, or on the application of the Intelligence Service or GCHQ for the purposes of the exercise of their functions by virtue of section 1(2)(c) or 3(2)(c)] may not relate to property in the British Islands unless it authorises the taking of action in relation to conduct within subsection (3B) below.

(3B) Conduct is within this subsection if it constitutes (or, if it took place in the United Kingdom, would constitute) one or more offences, and either--

(a) it involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose; or

(b) the offence or one of the offences is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more.

(4) Subject to subsection (5) below, the Security Service may make an application under subsection (2) above for a warrant to be issued authorising that Service (or a person acting on its behalf) to take such action as is specified in the warrant on behalf of the Intelligence Service or GCHQ and, where such a warrant is issued, the functions of the Security Service shall include the carrying out of the action so specified, whether or not it would otherwise be within its functions.

(5) The Security Service may not make an application for a warrant by virtue of subsection (4) above except where the action proposed to be authorised by the warrant--

(a) is action in respect of which the Intelligence Service or, as the case may be, GCHQ could make such an application; and

(b) is to be taken otherwise than in support of the prevention or detection of serious crime.