
STATUTORY INSTRUMENTS

2017 No. 845

INVESTIGATORY POWERS

The Investigatory Powers Act 2016 (Consequential Amendments and Saving Provisions) Regulations 2017

Made - - - - *17th August 2017*
Laid before Parliament *21st August 2017*
Coming into force - - *11th September 2017*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 267(1)(c) and 271(2) and (3) of the Investigatory Powers Act 2016⁽¹⁾.

Citation and commencement

1. These Regulations may be cited as the Investigatory Powers Act 2016 (Consequential Amendments and Saving Provisions) Regulations 2017 and come into force on 11th September 2017.

Regulation of Investigatory Powers (Notification of Authorisations etc.) Order 2000

2.—(1) In article 2 of the Regulation of Investigatory Powers (Notification of Authorisations etc.) Order 2000⁽²⁾ (interpretation), in the definition of “Commissioner”, for “an ordinary Surveillance Commissioner” substitute “a Judicial Commissioner”.

(2) Until 31st December 2017, the reference to a Judicial Commissioner in article 2 of that Order is to be read as including a Commissioner appointed under section 91(1)(b) of the Police Act 1997⁽³⁾.

Regulation of Investigatory Powers (Notification of Authorisations etc.) (Scotland) Order 2000

3.—(1) In article 2 of the Regulation of Investigatory Powers (Notification of Authorisations etc.) (Scotland) Order 2000⁽⁴⁾ (interpretation), in the definition of “Commissioner”, for “an ordinary Surveillance Commissioner” substitute “a Judicial Commissioner”.

(1) 2016 c. 25.
(2) S.I. 2000/2563.
(3) 1997 c. 50.
(4) S.S.I. 2000/340.

(2) Until 31st December 2017, the reference to a Judicial Commissioner in article 2 of that Order is to be read as including a Surveillance Commissioner appointed under section 2(1)(b) of the Regulation of Investigatory Powers (Scotland) Act 2000⁽⁵⁾.

Investigatory Powers Tribunal Rules 2000

4.—(1) In rule 2 of the Investigatory Powers Tribunal Rules 2000⁽⁶⁾ (interpretation), in the definition of “Commissioner”, for the words from “Interception” to the end substitute “Investigatory Powers Commissioner or any other Judicial Commissioner or the Investigatory Powers Commissioner for Northern Ireland”.

- (2) The reference to “any other Judicial Commissioner” in rule 2 of those Rules is to be read—
- (a) until 31st December 2017 as including a Commissioner appointed under section 91(1)(b) of the Police Act 1997, and
 - (b) until 30th April 2018 as including an Assistant Surveillance Commissioner appointed under section 63(1) of the Regulation of Investigatory Powers Act 2000⁽⁷⁾.

Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010

5.—(1) The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010⁽⁸⁾ is amended as follows.

(2) In the heading of Part 3, for “ORDINARY SURVEILLANCE COMMISSIONER” substitute “JUDICIAL COMMISSIONER”.

(3) In article 4(2), for “an ordinary Surveillance Commissioner” substitute “a Judicial Commissioner”.

(4) Until 31st December 2017 the reference to a Judicial Commissioner in article 4(2) of that Order is to be read as including a Commissioner appointed under section 91(1)(b) of the Police Act 1997.

Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014

6.—(1) The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014⁽⁹⁾ is amended as follows.

(2) In article 2 (interpretation), in the definition of “Commissioner”, for “an ordinary Surveillance Commissioner” substitute “a Judicial Commissioner”.

(3) Until 31st December 2017 the reference to a Judicial Commissioner in article 2 of that Order is to be read as including a Surveillance Commissioner appointed under section 2(1)(b) of the Regulation of Investigatory Powers (Scotland) Act 2000.

- (4) In article 11 (appeals against decisions by Commissioners)—
- (a) in paragraphs (1) and (3) for “Chief Surveillance Commissioner” substitute “Investigatory Powers Commissioner”;
 - (b) in paragraph (1) after “refusal of a Commissioner” insert “(other than the Investigatory Powers Commissioner)”.

(5) 2001 asp 11.
(6) S.I. 2000/2665.
(7) 2000 c. 23.
(8) S.I. 2010/123.
(9) S.S.I. 2014/339.

17th August 2017

Ben Wallace
Minister of State
Home Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to secondary legislation in consequence of changes made by the Investigatory Powers Act 2016 (c. 25) (“the Act”) regarding the oversight of investigatory powers.

Chapter 1 of Part 8 of the Act provides for the Investigatory Powers Commissioner and other Judicial Commissioners. The Investigatory Powers Commissioner and other Judicial Commissioners will have functions that are currently exercised by the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Chief Surveillance Commissioner and other Surveillance Commissioners, and the Scottish Chief Surveillance Commissioner and other Scottish Surveillance Commissioners. Those Commissioners are abolished by section 240 of the Act.

Accordingly, these Regulations amend secondary legislation so that references to the Investigatory Powers Commissioner and the other Judicial Commissioners replace references to the Commissioners that are being abolished.

When section 240 of the Act is commenced, saving provisions will be made such that persons holding office as a Surveillance Commissioner immediately before section 240 comes into force may continue to hold office until 31 December 2017. Similarly, saving provisions will enable persons holding office as Assistant Surveillance Commissioners immediately before the coming into force of section 240 of the Act to continue to hold office until 30 April 2018.

The saving provisions in these Regulations provide that the references to Judicial Commissioners which this instrument inserts into secondary legislation may be read as including Surveillance Commissioners until 31st December 2017 and (where appropriate) Assistant Surveillance Commissioners until 30 April 2018. That will enable any such Commissioners who continue to hold office to continue to carry out their functions.

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