STATUTORY INSTRUMENTS

2018 No. 652 (C. 52)

INVESTIGATORY POWERS

The Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018

Made - - - - 29th May 2018

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 267(1)(b), 270(2) and 272(1) of the Investigatory Powers Act 2016 [F1].

Annotations:
F1 2016 c. 25.

PART 1

GENERAL AND COMMENCEMENT

Citation and interpretation

1.—(1) These Regulations may be cited as the Investigatory Powers Act 2016 (Commencement No. 5 and Transitional and Saving Provisions) Regulations 2018.

(2) In these Regulations—

"RIPA" means the Regulation of Investigatory Powers Act 2000 [F2];

"the 2016 Act" means the Investigatory Powers Act 2016.

Annotations:
F2 2000 c 23.

General privacy protections coming into force on 31st May 2018

2. The following provisions of Part 1 of the 2016 Act come into force on 31st May 2018—

(a) section 2 (general duties in relation to privacy) so far as it applies to decisions relating to warrants under Part 2 or 5 or Chapters 1 and 3 of Part 6, except decisions regarding whether to approve the use of criteria under section 153 or 194;

(b) section 4 (definition of "interception" etc.);

(c) section 5 (conduct that is not interception);

(d) section 6 (definition of "lawful authority");

(e) section 10(3) (definition of "EU mutual assistance instrument" and "international mutual assistance agreement) [F3] for the purpose of the definitions of "EU mutual assistance instrument" and "international mutual assistance agreement" in section 60(1) (Part 2: interpretation).

Annotations:

F3 Section 10 is amended by S.I. 2017/730. The amendments have effect from 31st June 2017.

Interception provisions coming into force on 31st May 2018

3. The following provisions in Part 2 of the 2016 Act (lawful interception of communications) come into force on 31st May 2018—

(a) section 15 (warrants that may be issued under this Chapter) so far as not already in force;

(b) section 16 (obtaining secondary data) so far as not already in force;

(c) section 17 (subject matter of warrants);

(d) section 18(1)(a) and (g), (2) and (3) (persons who may apply for issue of a warrant);

(e) in section 19 (power of Secretary of State to issue warrants)—

(i) subsections (1) to (3) for the purpose of the Secretary of State deciding to issue a warrant but not for the purpose of the issuing of a warrant;

(ii) subsections (4) and (5);

(f) section 20 (grounds on which warrants may be issued by the Secretary of State);

(g) in section 21 (power of Scottish Ministers to issue warrants)—

(i) subsections (1) to (3) for the purpose of the Scottish Ministers deciding to issue a warrant but not for the purpose of the issuing of a warrant, and

(ii) subsections (4) to (6);

(h) section 22 ("relevant Scottish applications");

(i) section 23 (approval of warrants by Judicial Commissioners);

(j) section 26 (Members of Parliament etc.);

(k) section 27 (items subject to legal privilege);

(l) section 28 (confidential journalistic material);

(m) section 29 (sources of journalistic information);

(n) section 30 (decisions to issue warrants to be taken personally by Ministers);

(o) section 31 (requirements that must be met by warrants);

(p) section 40(1) to (3) and (8) (special rules for certain mutual assistance warrants);

(q) section 53 (safeguards relating to retention and disclosure of material);

(r) section 54 (safeguards relating to disclosure of material overseas);

(s) section 60 (Part 2: interpretation) so far as not already in force.

Equipment interference provisions coming into force on 31st May 2018

4. The following provisions of Part 5 of the 2016 Act (equipment interference) come into force on 31st May 2018—

(a) section 99 (warrants under this Part: general);

(b) section 100 (meaning of "equipment data");

(c) section 101 (subject-matter of warrants);

(d) in section 102 (power to issue warrants to intelligence services: the Secretary of State)—

(i) subsections (1) to (3) for the purpose of the Secretary of State deciding to issue a warrant but not for the purpose of the issuing of a warrant;

(ii) subsection (4) for the purpose of the Secretary of State deciding to issue a warrant but not for the purpose of the issuing of a warrant and only if the Secretary of State considers that the only grounds for considering the warrant to be necessary is for the purpose of preventing or detecting serious crime;

(iii) subsections (5) to (9);

(e) in section 103 (power to issue warrants to intelligence services: the Scottish Ministers)—

(i) subsections (1) and (2) for the purpose of the Scottish Ministers deciding to issue a warrant but not for the purpose of the issuing of a warrant;

(ii) subsections (3) and (4);

(f) section 104 (power to issue warrants to the Chief of Defence Intelligence)—

(i) subsection (1) for the purpose of the Secretary of State deciding to issue a warrant but not for the purpose of the issuing of a warrant;

(ii) subsections (2) and (3);

(g) section 105 (decision to issue warrants under sections 102 to 104 to be taken personally by Ministers);

(h) in section 108 (approval of warrants by Judicial Commissioners) so far as relating to decisions to issue warrants under any of sections 102 to 104;

(i) section 111(1) to (3) and (8) (members of Parliament etc.);

(j) section 112 (items subject to legal privilege);

(k) section 113 (confidential journalistic material);

(l) section 114 (sources of journalistic information);

(m) section 115 (requirements that must be met by warrants) so far as relating to warrants under any of sections 102 to 104;

(n) section 129 (safeguards relating to retention and disclosure of material) so far as relating to warrants under any of sections 102 to 104;

(o) section 130 (safeguards relating to disclosure of material overseas);

(p) section 135 (Part 5: interpretation).

Bulk provisions coming into force on 31st May 2018

5. The following provisions of Part 6 (bulk warrants) come into force on 31st May 2018—

(a) section 136 (bulk interception warrants);

(b) section 137 (obtaining secondary data);

(c) section 138 (power to issue bulk interception warrants) for the purpose of the Secretary of State deciding to issue a bulk interception warrant but not for the purpose of the issuing of such a warrant;

(d) section 139 (additional requirements in respect of warrants affecting overseas operators);

(e) section 140 (approval of warrants by Judicial Commissioners);

(f) section 141 (decisions to issue warrants to be taken personally by the Secretary of State);

(g) section 142 (requirements that must be met by warrants);

(h) section 150 (safeguards relating to retention and disclosure of material);

(i) section 151 (safeguards relating to disclosure of material overseas);

(j) section 157 (Chapter 1: interpretation);

(k) section 176 (bulk equipment interference warrants: general);

(l) section 177 (meaning of "equipment data");

(m) section 178 (power to issue bulk equipment interference warrants), for the purpose of the Secretary of State deciding to issue a bulk equipment interference warrant but not for the purpose of the issuing of such a warrant;

(n) section 179 (approval of warrants by Judicial Commissioners);

(o) section 182 (decisions to issue warrants to be taken personally by Secretary of State);

(p) section 183 (requirements that must be met by warrants);

(q) section 191 (safeguards relating to retention and disclosure of material);

(r) section 192 (safeguards relating to disclosure of material overseas);

(s) section 198 (Chapter 3: interpretation).

Miscellaneous provisions coming into force on 31st May 2018

6. The following provisions of the 2016 Act come into force on 31st May 2018—

(a) section 248 (combination of warrants and authorisations) for the purpose of the provisions of Schedule 8 coming into force in accordance with paragraph (b) of this regulation;

(b) in Schedule 8—

(i) paragraphs 1, 2, 4, 8 to 10, 13 and 14 (combined warrants that may be issued on application of an intelligence service or the Chief of Defence Intelligence) for the purpose of the Secretary of State or Scottish Ministers deciding to issue a combined warrant but not for the purpose of the issuing of such a warrant;

(ii) paragraph 15 (combined warrants: introductory provision);

(iii) in paragraph 16 (combined warrants: general)—

(aa) sub-paragraph (1) for the purpose of the Secretary of State or Scottish Ministers deciding to issue a combined warrant but not for the purpose of the issuing of such a warrant;

(bb) sub-paragraph (2);

(iv) paragraphs 17 to 19 (requirements that must be met by combined warrants and references to warrants and authorisations);

(v) in paragraph 20 (rules about issue etc. applying separately in relation to each part of a combined warrant)—

(aa) sub-paragraph (1) for the purpose of the matters in paragraphs (a) to (e) of that sub-paragraph;

(bb) sub-paragraph (2) for the purpose of the matters in paragraphs (a) and (b) of that sub-paragraph;

(cc) sub-paragraph (3);

(vi) in paragraph 21 (rules about issue etc. applying in relation to combined warrants)—

(aa) sub-paragraph (1), so far as relating to the issue of a combined warrant under Part 1 of Schedule 8;

(bb) sub-paragraph (2) for the purpose of the matters in paragraphs (a) to (c) of that sub-paragraph;

(cc) sub-paragraph (3);

(vii) in paragraph 22 (rules about issue etc. applying in relation to combined warrants)—

(aa) sub-paragraph (1), so far as relating to the issue of a combined warrant under Part 2 of Schedule 8;

(bb) sub-paragraphs (2) and (3);

(viii) in paragraph 23 (rules about issue etc. applying in relation to combined warrants)—

(aa) sub-paragraph (1), so far as relating to the issue of a combined warrant under Part 3 of Schedule 8;

(bb) sub-paragraph (2);

(ix) paragraph 33 (power to make consequential amendments).

General privacy protections coming into force on 27th June 2018

7. The following provisions of Part 1 of the 2016 Act (general privacy protections) come into force on 27th June 2018—

(a) section 2 (general duties in relation to privacy) so far as it applies to decisions regarding whether to approve the use of criteria under section 153 or 194;

(b) section 3 (offence of unlawful interception);

(c) section 7 (monetary penalties for certain unlawful interceptions);

(d) section 8 (civil liability for certain unlawful interceptions);

(e) section 9 (restriction on requesting interception by overseas authorities) so far as it applies to requests other than requests made by or on behalf of—

(i) the Director General of the National Crime Agency;

(ii) the Commissioner of Police of the Metropolis;

(iii) the Chief Constable of the Police Service of Northern Ireland;

(iv) the chief constable of the Police Service of Scotland, or

(v) the Commissioners for Her Majesty's Revenue and Customs;

(f) in section 10 (restrictions on requesting assistance under mutual assistance agreements etc.)—

(i) subsections (1) and (2) (restriction on requesting assistance under mutual assistance agreements etc.) so far as they applies to requests other than requests made by or on behalf of—

(aa) the Director General of the National Crime Agency;

(bb) the Commissioner of Police of the Metropolis;

(cc) the Chief Constable of the Police Service of Northern Ireland;

(dd) the chief constable of the Police Service of Scotland, or

(ee) the Commissioners for Her Majesty's Revenue and Customs;

(ii) subsection (3) so far as not already in force;

(g) Schedule 1 (monetary penalty notices).