STATUTORY INSTRUMENTS

2017 No. 859 (C. 72)

INVESTIGATORY POWERS

The Investigatory Powers Act 2016 (Commencement No. 3 and Transitory, Transitional and Saving Provisions) Regulations 2017

Made - - - - 29th August 2017

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 270(2) and 272(1) of the Investigatory Powers Act 2016(**1**)

PART 1

General and commencement

Citation and interpretation

1.—(1) These Regulations may be cited as the Investigatory Powers Act 2016 (Commencement No. 3 and Transitory, Transitional and Saving Provisions) Regulations 2017.

(2) In these Regulations—

"the 1997 Act" means the Police Act 1997(**2**);

"the 2016 Act" means the Investigatory Powers Act 2016;

"the Chief Surveillance Commissioner", "the other Surveillance Commissioners", "the Scottish Chief Surveillance Commissioner" and "the other Scottish Surveillance Commissioners" have the same meaning as in section 240 of the 2016 Act;

"RIPA" means the Regulation of Investigatory Powers Act 2000(**3**);

"RIPSA" means the Regulation of Investigatory Powers (Scotland) Act 2000(**4**).

Appointed day

2. The following provisions of the 2016 Act come into force on 1st September 2017—

(**1**) 2016 c. 25.
(**2**) 1997 c. 50.
(**3**) 2000 c. 23.
(**4**) 2000 asp 11.

(a) the definition of "related systems data" in section 15(6) (warrants that may be issued under this Chapter) for the purpose of the definition of "related systems data" in section 229(9) of the 2016 Act (main oversight functions);

(b) section 16(4) to (6) (meaning of "secondary data") for the purpose of the definition of "secondary data" in section 229(9) of the 2016 Act;

(c) section 199 (bulk personal datasets: interpretation) for the purpose of the definition of "bulk personal dataset" in section 229(9);

(d) in section 229—

(i) subsection (1)(a) to (c);

(ii) subsection (2)(a) to (c);

(iii) subsection (3)(a) and (c) to (j);

(iv) subsection (4);

(v) subsection (5);

(vi) subsection (8)(a), (d)(i) so far as it applies to deciding whether to approve the grant or renewal of an authorisation, (d)(ii), and (j) to (m), and

(vii) the definitions of "bulk personal datasets", "judicial authority", "related systems data", "relevant Minister" and "secondary data" in subsection (9);

(e) section 233 (functions under other Parts and other enactments) for all remaining purposes;

(f) section 234(2)(a) to (c) and (f) (matters required to be included in an annual report), (10) and (11);

(g) section 235(5) (reporting to the Investigatory Powers Commissioner any refusal by operators to comply with requirements);

(h) section 236 (referrals by the Intelligence and Security Committee of Parliament);

(i) section 240 (abolition of existing oversight bodies);

(j) paragraphs 67, 69 and 71 to 98 of Schedule 10.

PART 2

Investigatory Powers Commissioner: transitory, transitional and saving provisions

Transitory provisions regarding the main functions of the Commissioner

3.—(1) From 1st September 2017 until the coming into force of section 19 of the 2016 Act (power of Secretary of State to issue warrants)—

(a) section 229(1) has effect as if for paragraph (c) there were substituted—

"(c) the obtaining of related communications data under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000(**5**)

(b) section 229(2)(a) has effect as if for "Chapter 1 of Part 2 or Chapter 1 of Part 6" there were substituted "Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000(**6**)".

(**5**) See section 5(6) of RIPA. Related communications data is defined in section 20 of RIPA.

(**6**) Amended by paragraph 132(3) of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), section 32 of the Terrorism Act 2006 (c. 11), paragraph 6 of Schedule 12 to the Serious Crime Act 2007 (c. 27), paragraphs 77 and 78 of Schedule 8 to the Crime and Courts Act 2013 (c. 22), sections 3, 4(1) to (7) and 5 of the Data Retention and Investigatory Powers Act 2014 (c. 27), and S.I. 2000/3253 and 2013/602. The amendments made by the Data Retention and Investigatory Powers Act 2014 are saved by paragraph 9 of Schedule 9 to the 2016 Act. There are other amendments not relevant to these Regulations.

(2) From 1st September 2017 until the coming into force of section 45 of the 2016 Act (interception by providers of postal or telecommunications services), section 229(4)(e)(i) of the 2016 Act has effect as if the reference to section 45 were a reference to section 4(2) of RIPA (power to provide for lawful interception).

(3) From 1st September 2017 until the coming into force of section 47 of the 2016 Act (postal services: interception for enforcement purposes), section 229(4)(e)(i) of the 2016 Act has effect as if the reference to section 47 were a reference to section 3(3A) and (3B)(**7**) of RIPA (lawful interception without an interception warrant).

(4) From 1st September 2017 until the coming into force of section 50 of the 2016 Act (interception in psychiatric hospitals), section 229(4)(e)(i) of the 2016 Act has effect as if the reference to section 50 were a reference to section 4(5) and (6)(**8**) of RIPA.

(5) From 1st September 2017 until the coming into force of section 46 of the 2016 Act (interception by business etc. for monitoring and record-keeping purposes), section 229(4)(e)(ii) of RIPA has effect as if the reference—

(a) to section 46 were a reference to section 4(2) of RIPA, and

(b) to an intercepting authority (within the meaning given by section 18(1)) were a reference to a person specified in section 6(2)(**9**) of RIPA (application for issue of an interception warrant).

(6) From 1st September 2017 until the coming into force of section 7 of the 2016 Act (monetary penalties for certain unlawful interceptions), section 229(8)(a) of the 2016 Act is to be read as if for sub-paragraph (i) there were substituted—

"(i) whether to serve, vary or cancel a monetary penalty notice under section 1(1A)(**10**) of, or paragraph 11 of Schedule A1(**11**) to, the Regulation of Investigatory Powers Act 2000, a notice of intent under paragraph 3 of that Schedule or an information notice under paragraph 9 of that Schedule.".

Transitory provisions regarding functions of the Interception of Communications Commissioner

4. From 1st September 2017 until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force, the references to the Interception of Communications Commissioner in sections 1(1A) (unlawful interception), 12(11)(c) (maintenance of interception capability)(**12**), 15(4)(c) (general safeguards) and 19(9) (offence for unauthorised disclosures)(**13**) of, and paragraph 1 of Schedule A1 to, RIPA are to be read as references to the Investigatory Powers Commissioner(**14**).

(**7**) Section 3(3A) was inserted by section 100(1) of the Policing and Crime Act 2009 (c. 26). Section 3(3B) was inserted by paragraph 2 of Schedule 8 to the Counter-Terrorism and Security Act 2015 (c. 6).
(**8**) Section 4(5) was amended by paragraph 208(a) of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43) and paragraph 98 of Schedule 5 to the Health and Social Care Act 2012 (c. 7).
(**9**) Section 6 was amended by paragraph 132(3) of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraph 6 of Schedule 12 to the Serious Crime Act 2007, paragraph 78 of Schedule 8 to the Crime and Courts Act 2013 and S.I. 2013/602.
(**10**) Section 1(1A) was inserted by S.I. 2011/1340.
(**11**) Schedule A1 was inserted by S.I. 2011/1340 and was amended by paragraph 125 of Schedule 9 to the Crime and Courts Act 2013.
(**12**) Section 12 was amended by section 4(1), (6) and (7) of the Data Retention and Investigatory Powers Act 2014 (c. 27). The amendments are saved by paragraph 9 of Schedule 9 to the 2016 Act.
(**13**) Section 19 was amended by paragraphs 131 and 134 of Schedule 4 to the Serious Organised Crime and Police Act 2005, paragraphs 77 and 80 of Schedule 8 to the Crime and Courts Act 2013, and S.I. 2007/1098 and 2013/602.
(**14**) The Investigatory Powers Commissioner is defined for the purposes of RIPA by section 31(1) of that Act. Section 31(1) of RIPA was amended by paragraph 94 of Schedule 10 to the 2016 Act, which is brought into force by these Regulations.

Continuity of functions

5.—(1) The abolition of the office of a relevant commissioner does not affect the validity of anything done before the abolition.

(2) The transfer of a function does not affect the validity of anything done before the transfer.

(3) Paragraphs (4) to (7) apply in relation to the transfer of a function.

(4) Where anything is in the process of being made or done by or in relation to the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Chief Surveillance Commissioner or the Scottish Chief Surveillance Commissioner immediately before the transfer takes effect, it may be continued afterwards by or in relation to the Investigatory Powers Commissioner.

(5) Where anything is in the process of being made or done by or in relation to the other Surveillance Commissioners or the other Scottish Surveillance Commissioners immediately before the transfer takes effect, it may be continued afterwards by or in relation to a Judicial Commissioner.

(6) Where anything has been made or done by or in relation to the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Chief Surveillance Commissioner or the Scottish Chief Surveillance Commissioner and is in effect immediately before the transfer takes effect, it has effect afterwards as if made or done by or in relation to the Investigatory Powers Commissioner.

(7) Where anything has been made or done by or in relation to the other Surveillance Commissioners or the other Scottish Surveillance Commissioners and is in effect immediately before the transfer takes effect, it has effect afterwards as if made or done by or in relation to a Judicial Commissioner.

(8) In this regulation a reference to the transfer of a function is a reference to a case where—

(a) a function is a function of a relevant commissioner,

(b) that commissioner is abolished, and

(c) a corresponding function is conferred on the Investigatory Powers Commissioner or the other Judicial Commissioners.

(9) For the purposes of this regulation, "relevant commissioner" means—

(a) the Interception of Communications Commissioner;

(b) the Intelligence Services Commissioner;

(c) the Chief Surveillance Commissioner;

(d) the other Surveillance Commissioners;

(e) the Scottish Chief Surveillance Commissioner, or

(f) the other Scottish Surveillance Commissioners.

Saving provisions regarding oversight

6.—(1) The following provisions continue to have effect in relation to conduct taking place before the coming into force of these Regulations—

(a) sections 57(2), (4) and (4A) (Interception of Communications Commissioner)(**15**), 59(2) and (4) (Intelligence Services Commissioner)(**16**), 59A(1) and (2) (Additional functions

(**15**) Section 57 was amended by paragraphs 30(1) and (2)(a) of Schedule 17 to the Constitutional Reform Act 2005 (c. 4), paragraphs 6 and 10 of Schedule 9 to the Protection of Freedoms Act 2012 (c. 9), and S.I. 2000/3253.
(**16**) Section 59(2) was amended by S.I. 2000/3253.

of the Intelligence Services Commissioner)(**17**) and 62(1) to (2A) (Additional functions of Chief Surveillance Commissioner)(**18**) of RIPA;

(b) section 107(1) of the 1997 Act (supplementary provisions relating to Commissioners), and

(c) section 21(1) and (4) of RIPSA (functions of Chief Surveillance Commissioner).

(2) In continuing to have effect by virtue of paragraph (1) —

(a) section 57(2), (4) and (4A) of RIPA is to be read as if for "Interception of Communications Commissioner" there were substituted "Investigatory Powers Commissioner";

(b) section 59(2) and (4) of RIPA is to be read as if for "Intelligence Services Commissioner" there were substituted "Investigatory Powers Commissioner";

(c) section 59A(1) and (2) is to be read as if for "Intelligence Services Commissioner" there were substituted "Investigatory Powers Commissioner"

(d) section 62(1) to (2A) of RIPA is to be read as if for "Chief Surveillance Commissioner" there were substituted "Investigatory Powers Commissioner";

(e) section 21(1) and (4) of RIPSA is to be read as if for "Chief Surveillance Commissioner" there were substituted "Investigatory Powers Commissioner", and

(f) section 107(1) of the 1997 Act is to be read as if for "Chief Commissioner" there were substituted "Investigatory Powers Commissioner".

(3) A direction given under section 59A which is in force immediately before the coming into force of these Regulations continues to have effect in relation to conduct taking place before the coming into force of these Regulations as if given to the Investigatory Powers Commissioner.

PART 3

Surveillance Commissioners: transitory and saving provisions

Transitory and saving provisions regarding the Surveillance Commissioners

7.—(1) Where a person holds office as a Commissioner appointed under section 91(1)(b) of the 1997 Act (the Commissioners) immediately before the coming into force of section 240 of the 2016 Act (abolition of existing oversight bodies), section 91(1) to (4) and (6) to (10)(**19**) of the 1997 Act and sections 40(**20**) (information to be provided to Surveillance Commissioners) and 63(3) and (4) (Assistant Surveillance Commissioners) of RIPA continue to have effect in relation to such a person until—

(a) 31st December 2017, or

(b) the day on which the person ceases to be a Commissioner in accordance with section 91 of the 1997 Act, if earlier.

(2) But paragraph (1) does not apply to a person who is appointed as a Judicial Commissioner.

(3) In continuing to have effect by virtue of paragraph (1)—

(a) section 91 of the 1997 Act is to be read as if in subsection (9) and (9A) for "the Chief Commissioner" there were substituted "the Investigatory Powers Commissioner", and

(**17**) Section 59A was inserted by section 5 of the Justice and Security Act 2013 (c. 18).
(**18**) Section 62(2A) was amended by paragraph 11 of Schedule 9 to the Protection of Freedoms Act 2012.
(**19**) Section 91 was amended by paragraph 8(1) of Schedule 4 to RIPA, paragraph 22(2) of Schedule 4 to the Insolvency Act 2000 (c. 39), paragraph 27 of Schedule 17 to the Constitutional Reform Act 2005, paragraph 11(2) of Schedule 16 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), section 150(2) and (3) to the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), S.I. 1999/1747, S.I. 2004/1941 and S.I. 2009/1941.
(**20**) Section 40 was amended by paragraph 16 of Schedule 12 to the Serious Crime Act 2007, paragraph 88 of Schedule 8 and paragraph 12 of Schedule 21 to the Crime and Courts Act 2013 and S.I. 2014/892.