



**Isle of Man**

*Ellan Vannin*

**AT 23 of 2006**

**REGULATION OF SURVEILLANCE ETC.  
ACT 2006**





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## REGULATION OF SURVEILLANCE ETC. ACT 2006

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**Isle of Man***Ellan Vannin*

## REGULATION OF SURVEILLANCE ETC. ACT 2006

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**AN ACT** to make new provision for the regulation of surveillance by investigating authorities; the use of covert intelligence sources; and for connected purposes.

**GENERAL NOTE:** See SD352/09 Rules of the High Court of Justice 2009 Sch 15.1 para 3 reproduced below:

- “3. In any statutory provision a reference to a petition of dolence shall be construed as an application to the court in accordance with —
- (a) Chapter 9 of Part 13 (review of detention),
  - (b) rule 14.16 (appeal by way of case stated), or
  - (c) Chapter 2 of Part 14 (review of lawfulness of decision etc.),
- as the case may require.”

### PART 1 – INTRODUCTORY

#### 1 Purpose of Act

It is the principal purpose of this Act to provide a statutory framework to ensure that conduct (see section 2) involving the use of certain types of surveillance (for example monitoring conversations or movements) and the use of covert intelligence sources (for example, informants and undercover officers), takes place in accordance with human rights and to make appropriate provision for —

- (a) the purposes for which the conduct may be undertaken;
- (b) the persons who may undertake the conduct;
- (c) the persons who may authorise the conduct;
- (d) judicial oversight of the conduct; and
- (e) redress for individuals.

## 2 Conduct to which this Act applies

[P2000/23/26(1)]

This Act applies to the following conduct

- (a) directed surveillance (see section 4);
- (b) the conduct and use of covert human intelligence sources (see section 5);
- (c) intrusive surveillance (see section 6).

## 3 “Surveillance” and “covert surveillance”

[P2000/23/26(6) and (9), and 48(2) to (4)]

- (1) “**Surveillance**” shall be construed in accordance with this section.
- (2) Subject to subsections (3) and (4), “**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 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; or
  - (b) the use of a covert human intelligence source for so obtaining or recording information.
- (4) References to surveillance do not include references to any such entry on or interference with property or with wireless telegraphy as would be unlawful unless authorised under —
  - (a) section 9A(6) of the *Theft Act 1981* (warrant relating to the installation of surveillance devices); or
  - (b) section 71 of the *Anti-Terrorism and Crime Act 2003* (warrants for the intelligence services).
- (5) References to surveillance include references to the interception of a communication in the course of its transmission by means of a postal service or electronic communications network 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 that person; and
  - (b) there is no interception warrant under the *Interception of Communications Act 1988* authorising the interception.<sup>1</sup>
- (6) Conduct is not surveillance if it —

- (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 section 1 of the Wireless Telegraphy Act 1949 (an Act of Parliament) as that Act has effect in the Island), and
  - (b) is carried out from outside those premises exclusively for that purpose.
- (7) 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.

#### 4 “Directed surveillance”

[P2000/23/26(2) and 10]

- (1) “Directed surveillance” shall be construed in accordance with this section.
- (2) 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) In this section, “private information”, in relation to a person, includes any information relating to that person’s private or family life.

#### 5 Covert human intelligence

[P2000/23/26(7), (8), (9)]

- (1) “Covert human intelligence source” shall be construed in accordance with this section.
- (2) A person is a covert human intelligence source if that 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); or
  - (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.
- (3) For the purposes of this section —

- (a) 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
  - (b) a relationship is used covertly, and information obtained as mentioned in subsection (2)(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.
- (4) 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 (2), or is incidental to anything falling within any of those paragraphs.
- (5) 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.

## 6 Intrusive surveillance

[P2000/23/26(3), (4), (5) and (11)]

- (1) “**Intrusive surveillance**” shall be construed in accordance with this section.
- (2) Subject to subsections (3) and (4), surveillance is intrusive 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.
- (3) 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 3(4).
- (4) 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.

- (5) 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.

## PART 2 – AUTHORISATIONS

### *Common provisions*

#### **7 Authorisation of surveillance and human intelligence sources: lawful surveillance etc.**

[P2000/23/27]

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) the conduct is in accordance with the authorisation.

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

[P2000/23/43]

- (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), 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) 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), the period of 3 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 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 10 to 23 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 that person —
  - (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 or not to renew the authorisation, considered the results of that review.
- (7) The matters mentioned in subsection (6) 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 Department of Home Affairs (in this Act referred to as “**the Department**”) 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 (1) of section 19 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) An order under subsection (8) shall not come into operation unless it is approved by Tynwald.

## 9 Cancellation of authorisations

[P2000/23/45]

- (1) The person who granted or, as the case may be, last renewed an authorisation under this Act shall cancel it if —
  - (a) that person is satisfied that the authorisation is one in relation to which the requirements of section 10(2)(a) and (b), 14(2)(a) and (b) or, as the case may be, 16(2)(a) and (b) are no longer satisfied; or
  - (b) in the case of an authorisation under section 14, that person 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 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).
- (3) Where an authorisation under this Act 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 satisfied as to either of the matters mentioned in subsection (1).
- (4) The Department 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 a person mentioned in section 17(4).
- (7) In this section "designated deputy" has the same meaning as in section 17.
- (8) Regulations under subsection (4) shall be laid before Tynwald.

## PART 3 – AUTHORISATION OF DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES

### 10 Authorisation of directed surveillance

[P2000/23/28]

- (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) An authorisation for the carrying out of directed surveillance shall not be granted unless the person having the power to grant it has reasonable grounds to believe –
  - (a) that the authorisation is necessary on grounds falling within subsection (4); and<sup>2</sup>
  - (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) 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) 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 public safety;
  - (d) for the purpose of protecting public health;
  - (e) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department; or
  - (f) for any purpose (not falling within paragraphs (a) to (e)) which is specified for the purposes of this subsection by an order made by the Department.
- (5) 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.

- (6) An order under subsection (4)(f) shall not come into operation unless it is approved by Tynwald.

## **11 Notification to Commissioner of authorisations for directed surveillance**

- (1) If a person grants an authorisation for the carrying out of directed surveillance, that person shall give notice of that fact to the Commissioner.
- (2) A notice given for the purposes of subsection (1) –
- (a) must be given in writing within 2 days after the grant 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 Commissioner as are for the time being in force; and
  - (c) must specify such matters as the Department may by order prescribe.
- (3) If notice of the grant of an authorisation is not given in accordance with subsection (2) before the expiry of the period referred to in paragraph (a) of that subsection, the relevant authorisation shall cease to have effect on the expiry of that period.
- (4) The cessation of an authorisation under subsection (3) shall not affect the previous operation of that authorisation or anything duly done thereunder.
- (5) Where the Commissioner receives a notice for the purposes of subsection (1) of the grant of an authorisation, the Commissioner shall, as soon as practicable scrutinise the authorisation.
- (6) An order under subsection (2)(c) shall not come into operation unless it is approved by Tynwald.
- (7) 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.
- (8) Section 23(1) shall apply in respect of the functions of the Commissioner under this section as it applies in respect of the functions of the Commissioner under section 18.

## **12 Quashing, etc. of authorisations under s 10**

- (1) If the Commissioner is at any time satisfied that, at the time when an authorisation for the carrying out of directed surveillance (in this section referred to as the “authorisation”) was granted or at any time when it was renewed, there were no reasonable grounds for believing that the requirements of section 10(2)(a) and (b) were satisfied, the Commissioner may quash the authorisation with effect from the time of the grant of the authorisation or from the time of any renewal of the authorisation.

- (2) If the 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 10(2)(a) and (b) are satisfied in relation to the authorisation, the Commissioner may cancel the authorisation with effect from such time as appears to be the time from which those requirements ceased to be so satisfied.
- (3) Subject to subsection (4), where the 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 takes effect.
- (4) Subject to subsection (5), where —
- (a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (1)), and
  - (b) the 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 10(2)(a) and (b) 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 a time by the authorised conduct.
- (5) No order shall be made under this section for the destruction of any records required for pending criminal or civil proceedings.
- (6) As soon as reasonably practicable after exercising a power conferred by this section, the Commissioner shall make a report of the exercise of that power and of the reasons for doing so to the Chief Constable or, as the case requires, the Collector of Customs and Excise.
- (7) 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.
- (8) Section 23(1) shall apply in respect of the functions of the Commissioner under this section as it applies in respect of the functions of the Commissioner under section 20.

### 13 Appeals against decisions by Commissioner

- (1) Any authorising officer designated for the purposes of section 10 may appeal to a Deemster sitting in private against any of the following —

- (a) any decision of the Commissioner to quash or cancel such an authorisation;
  - (b) any decision of the Commissioner to make an order under section 12 for the destruction of records.
- (2) An appeal under this section must be brought within the period of 7 days beginning with the day on which the decision appealed against is reported to the appellant.
- (3) Subject to subsection (4), on an appeal under this section, the appeal shall be allowed if the Deemster is satisfied that there were reasonable grounds for believing that the requirements of section 10(2)(a) and (b) were satisfied in relation to the authorisation at the time in question.
- (4) If, on an appeal falling within subsection (1)(a), the Deemster —
- (a) is satisfied that grounds exist which justify the quashing or cancellation under section 12 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 Commissioner,
- the Deemster may modify the 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 12 that the Deemster considers should have been made.
- (5) Where, on an appeal under this section against a decision to quash or cancel an authorisation, the appeal is allowed, the Deemster shall also quash any related order for the destruction of records relating to information obtained by the authorised conduct.
- (6) Sections 22 and 23(2) shall apply in respect of appeals under this section as they apply in respect of appeals under section 21.

## 14 Authorisation of covert human intelligence sources

[P2000/23/29]

- (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) An authorisation for the conduct or the use of a covert human intelligence source shall not be granted unless the person having the power to grant it has reasonable grounds to believe —
- (a) that the authorisation is necessary on grounds falling within section 10(4);
  - (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 (5) and such other requirements as may be imposed by order made by the Department.
- (3) 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.
- (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.
- (5) 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 Department; 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) Regulations under subsection (5)(d) shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which

the regulations are laid or at the next following sitting fails to approve them, the regulations shall cease to have effect.

- (7) The Department 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.
- (8) An order under subsection (7) shall not come into operation unless it is approved by Tynwald.
- (9) 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 (10)) the public authority for whose benefit the activities of that individual as such a source are to take place.
- (10) 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).

## **15 Persons entitled to grant authorisations under ss 10 and 14**

[P2000/23/30]

- (1) Subject to subsection (2), the persons designated for the purposes of sections 10 and 14 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 made under this section by the Department.
- (2) An order under this section may impose restrictions —
  - (a) on the authorisations under sections 10 and 14 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 if it is specified in the Schedule.
- (4) An order under this section may amend the Schedule by —
  - (a) adding a public authority to that Schedule;
  - (b) removing a public authority from that Schedule;

- (c) making any change consequential on any change in the name of a public authority specified in that Schedule.
- (5) An order under this section shall not come into operation unless it is approved by Tynwald.

## PART 4 – INTRUSIVE SURVEILLANCE - AUTHORISATION

### 16 Authorisation of intrusive surveillance

[P2000/23/32]

- (1) Subject to the following provisions of this Act, the Chief Constable and the Collector of Customs and Excise (“the senior authorising officers”) shall each have power to grant authorisations for the carrying out of intrusive surveillance.
- (2) An authorisation for the carrying out of intrusive surveillance shall not be granted unless the senior authorising officer has reasonable grounds to believe –
  - (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; or
  - (b) for the purpose of preventing or detecting serious crime.
- (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.

**17 Grant of authorisations in the senior officer's absence**

[P2000/23/34]

- (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 the police force or by a customs 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; and
  - (b) it also is 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 relevant senior authorising officer.
- (4) For the purposes of this section —
  - (a) a person who holds the rank of chief inspector or above is entitled to act for the Chief Constable;
  - (b) a person who is designated for the purposes of this paragraph by the Treasury is entitled to act for the Collector of Customs and Excise in an urgent case.

**18 Notification to Commissioner of authorisations for intrusive surveillance**

[P2000/23/35]

- (1) Where a person grants or cancels an authorisation for the carrying out of intrusive surveillance, that person shall give notice of that fact to the 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 Commissioner as are for the time being in force; and
  - (c) must specify such matters as the Department 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 the Commissioner is required by section 19 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 the Commissioner receives a notice for the purposes of subsection (1) of the grant of an authorisation, 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), decide whether or not to approve the authorisation.
- (5) An order under subsection (2)(c) shall not come into operation unless it is approved by Tynwald.

*Authorisations - approval and quashing by Commissioner*

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

[P2000/23/36]

- (1) 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 the Commissioner (see section 28); and
  - (b) written notice of the Commissioner's decision to approve the grant of the authorisation has been given, in accordance with subsection (3), to the person who granted the authorisation.
- (2) Where the person who grants the authorisation —
  - (a) believes that the case is one of urgency, and
  - (b) gives notice in accordance with section 18(3)(b),subsection (1) shall not apply to the authorisation, and the authorisation shall have effect from the time of its grant.
- (3) Where subsection (1) applies to the authorisation —
  - (a) the approval of the Commissioner under this section shall be given if, and only if, the Commissioner is satisfied that there are

reasonable grounds for believing that the requirements of section 16(2)(a) and (b) are satisfied in the case of the authorisation; and

- (b) the Commissioner shall, as soon as reasonably practicable after making that decision, give written notice of the decision to the person who granted the authorisation.
- (4) If the Commissioner decides not to approve an authorisation to which subsection (1) applies, the Commissioner shall make a report of the findings to the Chief Constable or, as the case requires, the Collector of Customs and Excise.
- (5) 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.

## 20 Quashing of authorisations, etc.

[P2000/23/37]

- (1) If the Commissioner is at any time satisfied that, at the time when an authorisation was granted or at any time when it was renewed, there were no reasonable grounds for believing that the requirements of section 16(2)(a) and (b) were satisfied, the Commissioner may quash the authorisation with effect from the time of the grant of the authorisation or from the time of any renewal of the authorisation.
- (2) If the 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 16(2)(a) and (b) are satisfied in relation to the authorisation, the Commissioner may cancel the authorisation with effect from such time as appears 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 18(3)(b), the 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, the Commissioner may quash the authorisation with effect from the time of the grant of the authorisation or from the time of any renewal of the authorisation.
- (4) Subject to subsection (6), where the 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 takes effect.
- (5) Subject to subsection (6), where —
  - (a) an authorisation has ceased to have effect (otherwise than by virtue of subsection (1) or (3)), and

- (b) the 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 16(2)(a) and (b) 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 a 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) As soon as reasonably practicable after exercising a power conferred by this section, the Commissioner shall make a report of the exercise of that power and of the reasons for doing so to the Chief Constable or, as the case requires, the Collector of Customs and Excise.
- (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.
- (9) No notice shall be required to be given under section 18(1) in the case of a cancellation under subsection (2) of this section.
- (10) Notwithstanding the foregoing provisions of this section, all records relating wholly or partly to information obtained by the authorised conduct shall be destroyed not later than the date on which the period of 2 years beginning on the date on which the authorised conduct took place expires.
- (11) Records required for any pending criminal or civil proceedings shall not be destroyed under subsection (10).
- (12) Any records relating wholly or partly to information obtained by the authorised conduct which are lawfully supplied to an authority outside the Island shall be supplied only if that authority undertakes —
- (a) to use them only for the purpose supplied; and
- (b) to comply with such conditions or limitations as the person supplying the records imposes.

### *Appeals*

## **21 Appeals against decisions by Commissioner**

[P2000/23/38]

- (1) Any senior authorising officer may appeal to a Deemster sitting in private against any of the following —

- (a) any refusal of the Commissioner to approve an authorisation for the carrying out of intrusive surveillance;
  - (b) any decision of the Commissioner to quash or cancel such an authorisation;
  - (c) any decision of the Commissioner to make an order under section 20 for the destruction of records.
- (2) In the case of an authorisation granted by the deputy of a senior authorising office or by a person who for the purposes of section 14 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 7 days beginning with the day on which the refusal or decision appealed against is reported to the appellant.
- (4) Subject to subsection (5), on an appeal under this section, the appeal shall be allowed if the Deemster —
  - (a) is satisfied that there were reasonable grounds for believing that the requirements of section 16(2)(a) and (b) were satisfied in relation to the authorisation at the time in question; and
  - (b) is not satisfied that the authorisation is one of which notice was given in accordance with section 18(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 Deemster —
  - (a) is satisfied that grounds exist which justify the quashing or cancellation under section 20 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 Commissioner,

the Deemster may modify the 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 20 that the Deemster considers should have been made.
- (6) Where, on an appeal under this section against a decision to quash or cancel an authorisation, the appeal is allowed, the Deemster shall also quash any related order for the destruction of records relating to information obtained by the authorised conduct.
- (7) The references in this section to a person's deputy are references to a person mentioned in section 17(4).

**22 Appeals to a Deemster: supplementary**

[P2000/23/39]

- (1) A Deemster shall give notice of the determination of an appeal under section 21 to both —
  - (a) the person by whom the appeal was brought; and
  - (b) the Commissioner.
- (2) Where the determination of the Deemster on an appeal under section 18 is a determination to dismiss the appeal, the Deemster shall make a report of the findings to —
  - (a) the persons mentioned in subsection (1); and
  - (b) the Chief Minister.
- (3) Subject to subsection (2), the Deemster shall not give any reasons for any determination on an appeal under section 21.
- (4) The Deemster shall be entitled to determine the procedure in relation to any appeal under section 21.
- (5) When exercising functions in respect of an appeal under section 18, the Deemster is not sitting in the High Court.

**23 Information to be provided to Commissioner**

[P2000/23/40]

- (1) It shall be the duty of —
  - (a) the Chief Constable and every member of the police force,
  - (b) the Collector of Customs and Excise and every customs officer,to comply with any request of the Commissioner for documents or information required by the Commissioner for the purpose of enabling the Commissioner to carry out the functions of the Commissioner under sections 18 to 20 and such requests shall be complied with before the expiry of the period of 2 days beginning with the date on which the request was received.
- (2) It shall be the duty of —
  - (a) the Commissioner,
  - (b) the Chief Constable and every member of the police force,
  - (c) the Collector of Customs and Excise and every customs officer,to comply with any request of the Deemster for documents or information required by the Deemster for the purpose of an appeal under section 21.

## PART 5 – TRIBUNAL

### 24 The Tribunal

[P2000/23/65]

- (1) The Tribunal established under section 8 of the *Interception of Communications Act 1988* shall exercise the jurisdiction conferred on them by this Part.
- (2) The jurisdiction of the Tribunal under this Part is —
  - (a) to be the only appropriate tribunal for the purposes of section 7 of the *Human Rights Act 2001* 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; and
  - (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.
- (3) Proceedings fall within this subsection if 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 that person believes —
  - (a) to have taken place in relation to that person or to any of that person's property; and
  - (b) to have taken place in challengeable circumstances.
- (5) Subject to subsection (6), conduct falls within this subsection if (whenever it occurred) it is —
  - (a) conduct to which this Act applies;
  - (b) any entry on or interference with property or any interference with wireless telegraphy.
- (6) For the purposes only of subsection (3), nothing mentioned in 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) the police force;
  - (b) the Customs and Excise Division of the Treasury.
- (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 an authorisation under this Act; 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 conduct does not take place in challengeable circumstances to the extent that it is authorised by, or takes place with the permission of, any court, Deemster, High Bailiff or Justice of the Peace.

## 25 Exercise of the Tribunal's jurisdiction

[P2000/23/67]

- (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 24(2)(a); and
  - (b) to consider and determine any complaint made to them by virtue of section 24(2)(b).
- (2) Where the Tribunal hear any proceedings by virtue of section 24(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 24(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; or
    - (ii) any of the complainant's property;in any conduct falling within section 24(5);
  - (b) to investigate the authority (if any) for any conduct falling within section 24(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 or complaint if it appears to them that the bringing of the proceedings or the making of the complaint 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 24(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 27, where any proceedings or complaints have been brought before 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 27, the Tribunal on determining any proceedings or complaint 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 27(2)(f), the other orders that may be made by the Tribunal include —
- (a) an order quashing or cancelling an authorisation; and
  - (b) an order requiring the destruction of any records of information which —
    - (i) has been obtained in exercise of any power conferred by an authorisation; or
    - (ii) is held by any public authority in relation to any person.
- (8) Determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether they have jurisdiction) are subject to appeal to the High Court and to judicial review by petition of dolence.<sup>3</sup>

## 26 Tribunal procedure

[P2000/23/68]

- (1) Subject to any rules made under section 27, the Tribunal shall be entitled to determine their own procedure in relation to any proceedings brought before, or complaint 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 the Commissioner to provide the Tribunal with all such assistance (including the 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 or complaint relating to any matter, they shall secure that the Commissioner —
- (a) is aware that the matter is the subject of proceedings brought before, or complaint 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 brought before, or complaint made to, them, they shall give notice to the complainant which (subject to any rules made by virtue of section 27(2)(g)) shall be confined, as the case may be, to either —
- (a) a statement that they have made a determination in favour of the complainant; or

- (b) a statement that no determination has been made in favour of the complainant.
- (5) It shall be the duty of the persons specified in subsection (6) to disclose or provide to the Tribunal all such documents and information as the Tribunal may require for the purpose of enabling them to exercise or perform any jurisdiction, power or duty conferred or imposed on them by or under this Act.
- (6) Those persons are –
  - (a) every person holding office under the Crown;
  - (b) every person employed by or for the purposes of the police force or the Isle of Man Customs and Excise Service;
  - (c) every person by whom, or on whose application, there has been granted or given any authorisation under this Act;
  - (d) every person who holds or has held any office, rank or position with the same public authority as a person falling within paragraph (c);
  - (e) every person who has engaged in any conduct with the authority of an authorisation under this Act; and
  - (f) 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 given.

## 27 Tribunal rules

[P2000/23/69]

- (1) The Department may make rules regulating –
  - (a) the exercise by the Tribunal of the jurisdiction conferred on them by or under section 24; and
  - (b) any matters preliminary or incidental to, or arising out of, the hearing or consideration of any proceedings brought before or made to the Tribunal.
- (2) Without prejudice to the generality of subsection (1), rules under this section may –
  - (a) prescribe the form and manner in which proceedings or complaints are to be brought before the Tribunal;
  - (b) require persons bringing proceedings or making complaints 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 the bringing of the proceedings or the making of the complaint is frivolous or vexatious;
  - (c) make provision about the determination of any question as to whether a person by whom any proceedings have been brought

- before the Tribunal or any complaint has been made to the Tribunal is a person with a right to bring those proceedings or make that complaint;
- (d) prescribe the forms of hearing or consideration to be adopted by the Tribunal in relation to particular proceedings or complaint;
  - (e) prescribe the practice and procedure to be followed on, or in connection with, the hearing or consideration of any proceedings or complaint (including, where applicable, the mode and burden of proof and the admissibility of evidence);
  - (f) prescribe orders that may be made by the Tribunal under section 25(6) or (7);
  - (g) require information about any determination, award, order or other decision made by the Tribunal in relation to any proceedings or complaint to be provided (in addition to any statement under section 26(4)) to the person who brought the proceedings or made the complaint, or to that person's interests representative.
- (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 the Tribunal or made any complaint 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 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 or complaint.
- (4) 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 or complaint to be exercised or performed by a single member of the Tribunal; and
  - (b) conferring on the Tribunal such ancillary powers as the Department 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.
- (5) In making rules under this section the Department shall have regard, in particular, to –
- (a) the need to secure that matters which are the subject of proceedings or complaints brought before 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 or the economic well being of the Island.
- (6) 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.
- (7) Rules under this section shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the rules are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

## PART 6 – SUPPLEMENTAL PROVISIONS

### 28 Appointment of Commissioner and additional functions

[P2000/23/62]

- (1) The Department shall appoint a fit and proper person to carry out the functions of Surveillance Commissioner (in this Act referred to as “**the Commissioner**”).
- (2) The Commissioner shall hold office in accordance with the terms of appointment, and there shall be paid to the Commissioner out of money provided by Tynwald such allowances as the Department with the consent of the Treasury may direct.
- (3) As soon as practicable after the end of each year, the Commissioner shall make a report to the Department with respect to the carrying out of the Commissioner’s functions under this Act.
- (4) A copy of every annual report under subsection (3) shall be laid before Tynwald, and every such copy shall include a statement as to whether any matter has been excluded from it in pursuance of subsection (5).
- (5) If it appears to the Department, after consultation with the Commissioner, that the publication of any matter in an annual report under subsection (4) would be prejudicial to national security or to the prevention or detection of crime, the Department may exclude that matter from the copy of the report as laid before Tynwald.
- (6) Without prejudice to subsection (5), an annual report shall be a summary or collection of information framed in such a way as not to enable the identity of any person who is or has been the subject of surveillance under this Act to be ascertained.
- (7) Subject to subsections (5) and (6), the Department may by order specify information that must or must not be included in an annual return.

- (8) An order under subsection (7) shall not come into operation unless it is approved by Tynwald.
- (9) The Commissioner shall keep under review (so far as they are not required to be kept under review by the Interception of Communications Commissioner) 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.
- (10) It is not by virtue of subsection (9) the function of the Commissioner to keep under review –
  - (a) the exercise of any power of the Department to make, amend or revoke any public document under this Act; or
  - (b) the exercise of any jurisdiction or power of a Deemster or the Tribunal under this Act.

## 29 Issue and revision of codes of practice

[P2000/23/71]

- (1) The Department 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) that are conferred or imposed otherwise than on the Commissioner or the Deemster by or under this Act.
- (3) Before issuing a code of practice under subsection (1), the Department shall –
  - (a) prepare and publish a draft of that code; and
  - (b) consider any representations made to it about the draft;and the Department may incorporate in the code finally issued any modifications made by it to the draft after its publication.
- (4) A code of practice issued by the Department under this section shall not be brought into force except in accordance with an order made by the Department.
- (5) An order under subsection (4) may contain such transitional provisions and savings as appear to the Department to be necessary or expedient in connection with the bringing into force of the code brought into force by that order.
- (6) The Department 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.

- (7) Subsections (3) to (5) 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.
- (8) An order under this section shall not come into operation unless it is approved by Tynwald.

### **30 Effect of codes of practice**

[P2000/23/72]

- (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 29 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 a person to comply with any provision of a code of practice for the time being in force under section 29 shall not of itself render that person liable to any criminal or civil proceedings.
- (3) A failure to comply with a code of practice shall be treated as a disciplinary matter and is subject to disciplinary proceedings in accordance with the procedures that apply to the police or, as the case requires, the officers of the relevant authority.
- (4) The Commissioner may investigate the circumstances of any case in which there has been, or the Commissioner believes may have been, a failure on the part of a person to comply with a code of practice.
- (5) Section 23(1) shall apply in respect of the Commissioner's functions under subsection (4) as it applies in respect of the Commissioners functions under sections 18 to 20.
- (6) On completion of an investigation under subsection (4) the Commissioner shall report his findings to —
  - (a) in the case of a failure by a constable, the Chief Constable;
  - (b) in the case of a failure by an officer of customs and excise, the Collector of Customs and Excise; or
  - (c) in the case of a failure by a person who is an officer of a relevant public authority that has been prescribed under section 15(1), that authority.
- (7) A code of practice in force at any time under section 29 shall be admissible in evidence in any criminal or civil proceedings.
- (8) If any provision of a code of practice issued or revised under section 29 appears to —
  - (a) the court or tribunal conducting any civil or criminal proceedings,
  - (b) the Tribunal, or
  - (c) the Commissioner or the Deemster when carrying out any functions under this Act,

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.

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

[P2000/23/47]

- (1) The Department may by order do one or both of the following —
  - (a) apply this Act, with such modifications as it 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 Act as intrusive surveillance.
- (2) An order under this section shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve it, the order shall cease to have effect.

### **32 Savings**

[P2000/23/80]

- (1) Nothing in any of the provisions of this Act by virtue of which conduct of any description is or may be authorised by any authorisation, 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 an authorisation, or
    - (ii) the taking of any step for or towards obtaining the authority of such an 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.
- (2) For the avoidance of doubt it is declared that nothing in this Act affects any power conferred on the Post Office 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.

### 33 Interpretation

[P2000/23/48 and 81]

(1) In this Act —

“**apparatus**” includes any equipment, machinery or device and any wire or cable;

“**civil proceedings**” means any proceedings in or before any court or tribunal that are not criminal proceedings;

“**communication**” includes —

- (a) 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;

“**covert human intelligence source**” shall be construed in accordance with section 5;

“**crime**” is conduct which constitutes one or more criminal offences or is, or corresponds to, any conduct which, if it all took place in the Island would constitute one or more criminal offences, and “**criminal**”, in relation to any proceedings or prosecution, shall be construed accordingly;

“**customs officer**” means a person authorised as an officer of customs and excise under the *Customs and Excise Management Act 1986*;

“**Department**” means the Department of Home Affairs;

“**directed**” and “directed surveillance” shall be construed in accordance with section 4;

“**document**” includes a map, plan, design, drawing, picture or other image;

“**intrusive**” and “intrusive surveillance”, shall be construed in accordance with section 6;

“**modification**” includes alterations, additions and omissions, and cognate expressions shall be construed accordingly;

“**postal service**” includes a courier service within the meaning given by section 11(1) of the *Interception of Communications Act 1988*;

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

“**private vehicle**” means any vehicle which is used primarily for the private purposes of —

- (a) the person who owns it; or
- (b) a person otherwise having the right to use it but not including 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;

“**public authority**” means any public authority within the meaning of section 6 of the *Human Rights Act 2001* (acts of public authorities) other than a court or tribunal;

“**residential premises**” means 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) but does not include so much of any premises as constitutes any common area to which that person has or is allowed access in connection with the use or occupation of any accommodation;

“**senior authorising officer**” means a person who by virtue of section 16(1) is a senior authorising officer for the purposes of that section;

“**surveillance**” shall be construed in accordance with section 3(1) to (6);

“**surveillance device**” means any apparatus designed or adapted for use in surveillance;

“**the Tribunal**” has the meaning given by section 24;

“**vehicle**” includes any vessel, aircraft or hovercraft;

“**wireless telegraphy**” has the same meaning as in the Wireless Telegraphy Act 1949 (an Act of Parliament) (as that Act has effect in the Island) and, in relation to wireless telegraphy, “interfere” has the same meaning as in that Act.

- (2) 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.
- (3) 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 conduct as such a source which is in response to inducements or requests made by or on behalf of that authority.
- (4) In this Act, references to serious crime are references to crime that satisfies either of the following tests —
  - (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 and has no previous convictions could reasonably be expected to be sentenced to custody for a term of 3 years or more; or
  - (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.
- (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.

### **34 Expenses**

There shall be paid out of money provided by Tynwald any expenses of the Department under or attributable to this Act.

### **35 Short title and commencement**

- (1) This Act may be cited as the Regulation of Surveillance, etc. Act 2006.
- (2) This Act shall come into force on such day as the Department may by order appoint and different days may be so appointed for different provisions and for different purposes.<sup>4</sup>

**SCHEDULE<sup>5</sup>**

**PUBLIC AUTHORITIES**

Section 15(3)

- (1) The Assessor of Income Tax.
- (2) A Department.
- (3) The Isle of Man Constabulary (within the meaning of section 3 of the *Police Act 1993*).
- (4) The Isle of Man Financial Services Authority.
- (5) The Isle of Man Office of Fair Trading.



## ENDNOTES

### Table of Endnote References

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<sup>1</sup> Subs (5) amended by Communications Act 2021 Sch 9.

<sup>2</sup> Para (a) amended by Statute Law Revision Act 2021 s 29.

<sup>3</sup> See General Note.

<sup>4</sup> ADO (whole Act) 15/12/2006 (SD848/06).

<sup>5</sup> Sch substituted by SD2017/0248.