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LEGISLATION

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REGULATION OF INVESTIGATORY POWERS ORDINANCE 2012

An Ordinance to regulate the use of covert surveillance, the use of covert human intelligence sources and the entry on or interference with property by investigating authorities; to provide for the appointment of an Investigatory Powers Commissioner; to establish an Investigatory Powers Tribunal; and for related matters

G. E. STACEY
ADMINISTRATOR

17th October 2012.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Regulation of Investigatory Powers Ordinance 2012.

2. Commencement

This Ordinance comes into force on a date to be appointed by the Administrator by order made as a public instrument.

3. Interpretation

(1) In this Ordinance, unless the context otherwise requires,—

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

“authorisation” means an authorisation under section 20, 21, 22 or 23;

“authorising officer” must be construed in accordance with sections 4 and 5;

“CHIS” means a covert human intelligence source and must be construed in accordance with section 9;

“CI authorisation” has the meaning given in section 6;

“code of practice” means a code of practice issued under section 38;

“Commissioner” means the Investigatory Powers Commissioner appointed under section 14;

“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 for the actuation of any apparatus;

“conduct” and “use”, in relation to a CHIS, must be construed in accordance with section 9;

“confidential journalistic information” has the meaning given in section 7;

“confidential personal information” has the meaning given in section 8;

“covert surveillance” has the meaning given in section 10;

“imprisonable crime” means conduct that constitutes a criminal offence on conviction for which the law provides for a penalty of imprisonment (whether or not any other penalty is also provided);

“investigating authority” means—

- (a) the Sovereign Base Areas Police Service;
- (b) the Sovereign Base Areas Customs and Immigration Service;

“LC authorisation” has the meaning given in section 11;

“LP authorisation” has the meaning given in section 12;

“matters subject to legal privilege” has the meaning given in section 13;

“national security” means the national security of the United Kingdom and its overseas territories;

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

“private information”, in relation to a person, includes any information relating to the person’s private or family life;

“private vehicle” means (subject to subsection (2)) a vehicle that is used primarily for the private purposes of the person who owns it or of a person otherwise having the right to use it;

“relevant crime” means conduct that constitutes a criminal offence if—

- (a) 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; or
- (b) the offence is one on conviction for which the law provides for a penalty of imprisonment for life or for a maximum term of 3 years or more (whether or not any other penalty is also provided);

“relevant officer” means—

- (a) in relation to an authorisation granted or renewed on the application of a police officer, the Chief Constable;
- (b) in relation to an authorisation granted or renewed on the application of a customs officer, the Fiscal Officer;

“residential premises” means (subject to subsection (3)) so much of any premises as is for the time being occupied and used by a person, however temporarily, for residential purposes or otherwise as living accommodation (including hotel, prison and custody accommodation that is so occupied or used);

“serious crime” means conduct that constitutes a criminal offence if—

- (a) 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; or
- (b) the offence is one on conviction for which the law provides for a penalty of imprisonment for life or for a maximum term of 10 years or more (whether or not any other penalty is also provided);

“surveillance” must be construed in accordance with section 10;

“Surveillance Commissioner” means a Commissioner holding office under section 91 of the Police Act 1997(a) (or any provision that replaces it);

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

“Tribunal” means the Investigatory Powers Tribunal established under section 31;

“vehicle” includes a vessel, aircraft or hovercraft.

- (2) In subsection (1), the reference to a person having the right to use a vehicle does not, in relation to a motor vehicle, include a reference to a person whose right to use the vehicle derives only from having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey.
- (3) In subsection (1), the reference to premises occupied or used by a person for residential purposes or otherwise as living accommodation does not include a reference to so much of any premises as constitutes any common area to which the person has or is allowed access in connection with the use or occupation of accommodation.
- (4) For the purposes of this Ordinance, detecting crime must be taken to include—
 - (a) establishing by whom, for what purpose, by what means and generally in what circumstances a crime was committed; and
 - (b) the apprehension of the person by whom a crime was committed.
- (5) In this Ordinance, a reference to a tax, duty, levy or other imposition, contribution or charge payable to the Crown includes a reference to such a tax, duty, levy or other imposition, contribution or charge that is collected by the Republic in accordance with arrangements made with the Republic (whether pursuant to the Treaty of Establishment or otherwise).
- (6) A notice that is required by this Ordinance to be given in writing may be given by being transmitted by electronic means.

4. Meaning of authorising officer: applications by police officers

- (1) Where an application for an LC authorisation or an authorisation under section 21, 22 or 23 is made by a police officer, the authorising officer for the purposes of this Ordinance is—
 - (a) the Chief Constable or a designated deputy; or
 - (b) where it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a police officer referred to in paragraph (a), a police officer holding the rank of Chief Superintendent.
- (2) Where an application for an authorisation under section 20 other than an LC authorisation is made by a police officer, the authorising officer for the purposes of this Ordinance is—
 - (a) the Chief Constable, a designated deputy or a police officer holding the rank of Chief Superintendent; or
 - (b) where it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a police officer referred to in paragraph (a), a police officer holding the rank of Superintendent.
- (3) In this section, “designated deputy” means—
 - (a) the Deputy Chief Constable; and
 - (b) any other police officer nominated under section 7 of the Police Ordinance 2007(b) to exercise the Chief Constable’s functions.
- (4) In this section, a reference to an application for an authorisation includes a reference to an application for the renewal of an authorisation.

5. Meaning of authorising officer: applications by customs officers

- (1) If an application for any authorisation under this Ordinance is made by a customs officer, an authorising officer for the purposes of this Ordinance is the Fiscal Officer or a designated deputy.
- (2) In this section, “designated deputy” means any customs officer of a grade of higher executive officer (or its equivalent) or above nominated by the Fiscal Officer for the purposes of this Ordinance.
- (3) In this section, a reference to an application for an authorisation includes a reference to an application for the renewal of an authorisation.

6. Meaning of CI authorisation

In this Ordinance, “CI authorisation” means an authorisation for the entry on or interference with property if, at the time it is granted, the authorising officer believes that the conduct authorised by it is likely to result in any person acquiring knowledge of—

- (a) confidential journalistic material;
- (b) confidential personal information; or
- (c) matters subject to legal privilege.

7. Meaning of confidential journalistic material

(1) In this Ordinance, “confidential journalistic material” means—

- (a) material acquired or created for the purposes of journalism which—
 - (i) is in the possession of persons who acquired or created it for those purposes;
 - (ii) is held subject to an undertaking, restriction or obligation of the kind referred to in section 8(3); and
 - (iii) has been continuously held (by 1 or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism; and
- (b) communications as a result of which information is acquired for the purposes of journalism and held as mentioned in paragraph (a)(ii).

(2) For the purposes of subsection (1), a person who receives material, or acquires information, from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

8. Meaning of confidential personal information

(1) In this Ordinance, “confidential personal information” means—

- (a) personal information which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office, and which the person holds in confidence; and
- (b) communications as a result of which personal information—
 - (i) is acquired or created as mentioned in paragraph (a); and
 - (ii) is held in confidence.

(2) For the purposes of this section “personal information” means information concerning a person (whether living or dead) who can be identified from it and relating—

- (a) to the person’s physical or mental health; or
- (b) to spiritual counselling or assistance given or to be given to the person.

(3) A person holds information in confidence for the purposes of this section if the person holds it subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any legislation (including in an Ordinance enacted after this Ordinance).

9. Meaning of covert human intelligence source, etc

(1) A person is a covert human intelligence source (“CHIS”) for the purposes of this Ordinance if—

- (a) the person 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);
- (b) the person covertly uses such a relationship to obtain information or to provide access to information to a third person; or
- (c) the person covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

- (2) In this Ordinance—
 - (a) references to the conduct of a CHIS are references to any conduct of a CHIS that falls within any of paragraphs (a) to (c) of subsection (1) or is incidental to anything falling within any of those paragraphs;
 - (b) references to the use of a CHIS are references to inducing, asking or assisting a person to engage in the conduct of a CHIS or to obtain information by means of the conduct of a CHIS.
- (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 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;
 - (b) a relationship is used covertly, and information obtained as mentioned in subsection (1)(c) is disclosed covertly, if the relationship is used or, as the case may be, the information disclosed, in a manner calculated to ensure that 1 of the parties to the relationship is unaware of the use or disclosure in question.

10. Meaning of covert surveillance, etc

- (1) In this Ordinance, “covert surveillance” means surveillance that is undertaken—
 - (a) for the purposes of a specific investigation or a specific operation;
 - (b) in a manner that is likely to result in private information being obtained about a person (whether or not a person specifically identified for the purposes of the investigation or operation);
 - (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 Ordinance to be sought for the surveillance; and
 - (d) 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.
- (2) Except as provided in subsection (3), in this Ordinance “surveillance” includes—
 - (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications;
 - (b) recording anything monitored, observed or listened to in the course of surveillance; and
 - (c) surveillance by, or with the assistance of, a surveillance device.
- (3) References in this Ordinance to surveillance do not include references to—
 - (a) any conduct of a CHIS for obtaining or recording (whether or not using a surveillance device) information disclosed in the presence of the CHIS;
 - (b) the use of a CHIS for so obtaining or recording information; or
 - (c) any entry on or interference with property that would be unlawful unless authorised under this Ordinance.

11. Meaning of LC authorisation

- (1) In this Ordinance, “LC authorisation” means an authorisation under section 20 for the carrying out of covert surveillance in relation to anything taking place on so much of any premises referred to in subsection (2) as is, at any time during the surveillance, used for the purpose of a legal consultation.
- (2) The premises are—
 - (a) a police station;
 - (b) a customs station designated under section 9 of the Customs Ordinance 2005(c);
 - (c) the place of business of a professional legal adviser;
 - (d) a prison or other place in which persons serving sentences of imprisonment or being held in custody may be detained;
 - (e) a place used for the sittings and business of any court, tribunal, inquest or inquiry.

- (3) In this section, “legal consultation” means—
 - (a) a consultation between a professional legal adviser and the legal adviser’s client or any person representing the client;
 - (b) a consultation between a medical practitioner and a professional legal adviser, the legal adviser’s client or any person representing the client that is made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

12. Meaning of LP authorisation

In this Ordinance, “LP authorisation” means an authorisation under section 21 if any conduct to be authorised by the authorisation consists of any activities involving the conduct or the use of a CHIS to—

- (a) obtain matters subject to legal privilege;
- (b) provide access to any matters subject to legal privilege to another person; or
- (c) disclose matters subject to legal privilege.

13. Meaning of matters subject to legal privilege

- (1) Except as provided in subsection (5), in this Ordinance “matters subject to legal privilege” means matters to which subsection (2), (3) or (4) applies.
- (2) This subsection applies to communications made in connection with the giving of legal advice to a professional legal adviser’s client—
 - (a) between the adviser and the adviser’s client; or
 - (b) between the adviser and any person representing the adviser’s client.
- (3) This subsection applies to communications made in connection with or in contemplation of legal proceedings and for the purpose of such proceedings—
 - (a) between a professional legal adviser and the adviser’s client or any person representing the adviser’s client; or
 - (b) between a professional legal adviser, the adviser’s client or any person representing the adviser’s client and any other person.
- (4) This subsection applies to items enclosed with or referred to in communications of the kind referred to in subsections (2) or (3) and made—
 - (a) in connection with the giving of legal advice; or
 - (b) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.
- (5) For the purposes of this Ordinance—
 - (a) communications and items are not matters subject to legal privilege when they are in the possession of a person who is not entitled to possession of them;
 - (b) communications and items held, or oral communications made, with the intention of furthering a criminal purpose are not matters subject to legal privilege.

Part 2

Investigatory Powers Commissioner

14. Appointment of Commissioner

- (1) The Administrator must appoint an Investigatory Powers Commissioner for the purposes of this Ordinance.
- (2) The Commissioner must be a person who holds or who has held high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005(d)) or is or has been a member of the Judicial Committee of the Privy Council.
- (3) Except as provided in subsection (4), the Commissioner must be appointed for a fixed term and holds and vacates office in accordance with the terms of the appointment (which may be renewed).

- (4) Where a person who is appointed as the Commissioner is also a Surveillance Commissioner, the person ceases to be the Commissioner when the person ceases to be a Surveillance Commissioner unless the appointment is renewed under subsection (3).
- (5) The Administrator may pay to the Commissioner, or to any person exercising functions on the Commissioner's behalf, such allowances as the Administrator thinks appropriate.

15. Commissioner's functions

- (1) The Commissioner must keep under review the exercise and performance, by the persons on whom they are conferred or imposed, of the powers and duties conferred or imposed by or under this Ordinance.
- (2) However, it is not the function of the Commissioner to keep under review the exercise of any power of the Administrator to make, issue, amend or revoke subordinate legislation or a code of practice.
- (3) The Commissioner may make a report to the Administrator if at any time it appears to the Commissioner that there has been a contravention of this Ordinance in relation to any matter with which the Commissioner is concerned.
- (4) The Commissioner must give the Tribunal all such assistance (including the opinion of the Commissioner as to any issue falling to be determined by the Tribunal) as is appropriate—
 - (a) in connection with the investigation of any matter by the Tribunal; or
 - (b) otherwise for the purposes of the Tribunal's consideration or determination of any matter.
- (5) The Commissioner must make an annual report to the Administrator about the carrying out of the Commissioner's functions under this Ordinance.
- (6) The Administrator must publish a copy of every annual report made by the Commissioner together with a statement as to whether any matter has been excluded from that copy under subsection (7).
- (7) If it appears to the Administrator, after consultation with the Commissioner, that the publication of any matter in an annual report would be contrary to the public interest or prejudicial to national security, to the prevention or detection of crime or to the continued discharge of the functions of an investigating authority, the Administrator may exclude that matter from the report.

16. Exercise of Commissioner's functions

- (1) The Administrator may, after consulting the Commissioner, provide the Commissioner with such staff as the Administrator thinks necessary for the proper discharge of the Commissioner's functions.
- (2) The Commissioner may authorise (whether generally or specifically) 1 or more of the following to exercise any of the Commissioner's functions—
 - (a) a Surveillance Commissioner or Assistant Surveillance Commissioner;
 - (b) a member of staff provided under subsection (1); and
 - (c) where the Commissioner is also a Surveillance Commissioner, a member of the staff provided under section 91(9) of the Police Act 1997 (or any provision that replaces it).
- (3) During any absence or incapacity of the Commissioner, and during any vacancy in the office of Commissioner, the Commissioner's functions (including the function referred to in subsection (2)) may be exercised by any Surveillance Commissioner.
- (4) The Commissioner's functions may be exercised from outside the Areas.
- (5) In this section, "Assistant Surveillance Commissioner" means an Assistant Surveillance Commissioner appointed under section 63 of the Regulation of Investigatory Powers Act 2000(e) (or any provision that replaces it).

17. Co-operation with Commissioner

- (1) This section applies to—
 - (a) a person by whom, or on whose application, an authorisation has been granted or renewed;

- (b) a person who holds or has held any office, rank or position within the same investigating authority as a person falling within paragraph (a);
 - (c) a person who has engaged in any conduct with the authority of an authorisation;
 - (d) a person who holds or has held any office, rank or position with an investigating authority for whose benefit an authorisation has or may be granted or renewed.
- (2) Every person to whom this section applies must disclose to the Commissioner all such documents and information as the Commissioner may require for the purpose of enabling the Commissioner to carry out the Commissioner's functions.

18. Commissioner's decisions not subject to appeal

Decisions of the Commissioner (including decisions as to the Commissioner's jurisdiction) are not subject to appeal and may not be questioned in any court.

Part 3

Authorisation of investigatory powers

19. Conduct authorised under this Ordinance lawful

- (1) This section applies to the following conduct—
- (a) covert surveillance;
 - (b) the conduct and the use of a CHIS;
 - (c) the entry on or interference with property.
- (2) Conduct to which this section applies is lawful for all purposes if—
- (a) an authorisation confers an entitlement to engage in that conduct on the person whose conduct it is; and
 - (b) the person's conduct is in accordance with the authorisation.
- (3) A person is not to be subject to any civil liability in respect of any conduct of the person that—
- (a) is incidental to conduct that is lawful by virtue of subsection (2); and
 - (b) is not itself conduct a separate authorisation for which might reasonably have been expected to have been sought in the case in question.

20. Authorisation of covert surveillance

- (1) Except as provided in subsections (3) to (6), an authorising officer may grant an authorisation for the carrying out of covert surveillance if the officer is satisfied that—
- (a) the authorisation is necessary—
 - (i) in the case of an LC authorisation, on grounds falling within subsection (2)(a); or
 - (ii) in any other case, on grounds falling within subsection (2); and
 - (b) the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.
- (2) An authorisation is necessary on grounds falling within this subsection if it is necessary—
- (a) for the purpose of preventing or detecting serious crime;
 - (b) for the purpose of preventing or detecting imprisonable crime or of preventing disorder;
 - (c) in the interests of public safety; or
 - (d) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to the Crown.
- (3) An authorisation may not be granted for the carrying out of covert surveillance that consists of intercepting a communication in the course of transmission by means of a postal service or telecommunications system.

- (4) An authorisation may not be granted for the carrying out of covert surveillance in relation to anything taking place on residential premises or in a private vehicle that involves the presence of an individual on the premises or in the vehicle.
- (5) An authorisation may not be granted for the carrying out of covert surveillance in relation to anything taking place on residential premises or in a private vehicle that is carried out by means of a surveillance device unless—
 - (a) the surveillance is carried out without the device being present on the premises or in the vehicle; and
 - (b) the device is not such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.
- (6) Subsection (5) does not prevent the granting of an authorisation to carry out covert surveillance to the extent that it is carried out by means only of a surveillance device designed or adapted principally for the purpose of providing information about the location of a vehicle.
- (7) The conduct that is authorised by an authorisation for the carrying out of covert surveillance is any conduct that—
 - (a) consists of the carrying out of covert surveillance of the description specified in the authorisation; and
 - (b) is carried out in the circumstances specified in the authorisation and for the purposes of, or in connection with, the investigation or operation specified in the authorisation.
- (8) References in this section to the presence of a surveillance device in a vehicle include references to its being located on or under the vehicle and its being attached to the vehicle.

21. Authorisation of conduct or use of covert human intelligence source

- (1) An authorising officer may grant an authorisation for the conduct or the use of a CHIS if the officer is satisfied that—
 - (a) the authorisation is necessary—
 - (i) in the case of an LP authorisation, on grounds falling within subsection (2)(a);
 - (ii) in any other case, on grounds falling within subsection (2);
 - (b) the authorised conduct or use is proportionate to what is sought to be achieved by the conduct or use; and
 - (c) arrangements exist for the CHIS's case that satisfy the requirements of subsection (3).
- (2) An authorisation is necessary on grounds falling within this subsection if it is necessary—
 - (a) for the purpose of preventing or detecting serious crime;
 - (b) for the purpose of preventing or detecting imprisonable crime or of preventing disorder;
 - (c) in the interests of public safety; or
 - (d) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to the Crown.
- (3) Arrangements exist for the CHIS's case that satisfy the requirements of this subsection if such arrangements are in force as are necessary for ensuring that—
 - (a) 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 CHIS on behalf of the authority and for the CHIS's security and welfare;
 - (b) 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 CHIS;
 - (c) there will at all times be another 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 CHIS;

- (d) the records relating to the CHIS that are maintained by the relevant investigating authority will always contain particulars of the matters set out in paragraph 2 of Schedule 1; and
 - (e) records maintained by the relevant investigating authority that disclose the identity of the CHIS 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.
- (4) The conduct that is authorised by an authorisation for the conduct or the use of a CHIS is conduct that—
 - (a) is comprised in such activities involving the conduct or the use of a CHIS as are specified in the authorisation;
 - (b) consists of conduct by or in relation to the person specified in the authorisation as the person to whose actions as a CHIS the authorisation relates; and
 - (c) is carried out for the purposes of, or in connection with, the investigation or operation specified in the authorisation.
- (5) The conduct that may be authorised under this section includes the conduct and the use of a CHIS outside the Areas.
- (6) In this section, “relevant investigating authority”, in relation to an authorisation for the conduct or the use of a CHIS, means (subject to subsection (7)) the investigating authority for whose benefit the activity of the CHIS is to take place.
- (7) In the case of an authorisation for the conduct or the use of a CHIS whose activities are to be for the benefit of more than 1 investigating authority, the references in subsection (3) to the relevant investigating authority are references to 1 of them (whether or not the same 1 in the case of each reference).
- (8) For the purposes of this Ordinance, the activities of a CHIS that are to be taken as activities for the benefit of a particular investigating authority include any conduct as a CHIS that is in response to inducements or requests made by or on behalf of the authority.
- (9) This section is subject to Schedule 1.

22. Authorisation of entry on or interference with property: prevention and detection of serious crime

- (1) Except as provided in subsection (2), an authorising officer may grant an authorisation for the entry on or interference with property if the officer is satisfied that—
 - (a) consideration has been given as to whether it would be reasonably practicable, without prejudicing the investigation or operation, to obtain permission to enter on or interfere with the property;
 - (b) the authorisation is necessary for the purpose of preventing or detecting serious crime; and
 - (c) the authorised entry on or interference with the property is proportionate to what is sought to be achieved by undertaking it.
- (2) An authorisation may not be granted—
 - (a) for the entry on or into residential premises, a building or land within the curtilage of a building; or
 - (b) for the purposes of, or in connection with, the carrying out of covert surveillance, unless the covert surveillance is authorised by an authorisation granted under section 20.
- (3) The conduct that is authorised by an authorisation for the entry on or interference with property is any conduct that—
 - (a) consists of the entry on or interference with property specified in the authorisation; and
 - (b) is carried out in the circumstances specified in the authorisation and for the purposes of, or in connection with, the investigation or operation specified in the authorisation.
- (4) In this section, “building” does not include a partially-constructed structure that is unused.

23. Authorisation of entry on or interference with property: prevention and detection of relevant crime

- (1) Except as provided in subsection (3), an authorising officer may grant an authorisation (the “second authorisation”) for the entry on or interference with property if the officer is satisfied that—
 - (a) the conduct authorised by the authorisation is for the purposes of, or in connection with, the carrying out of covert surveillance authorised by an authorisation (the “first authorisation”) granted under section 20 and for no other purposes;
 - (b) the second authorisation is not a CI authorisation;
 - (c) consideration has been given as to whether it would be reasonably practicable, without prejudicing the investigation or operation, to obtain permission to enter on or interfere with the property;
 - (d) both the first and the second authorisations are necessary for the purpose of preventing or detecting relevant crime; and
 - (e) the authorised entry on or interference with the property is proportionate to what is sought to be achieved by undertaking it.
- (2) Subject to subsection (3) and to section 20(3) to (6), the conduct that may be authorised under this section includes—
 - (a) entering and remaining on land;
 - (b) placing a surveillance device on or in, or attaching such a device to,—
 - (i) land referred to in paragraph (a) or anything attached to such land;
 - (ii) a vehicle or other item on or in a public place, land referred to in paragraph (a) or other land to enter which there is express or implied permission;
 - (c) using, maintaining and retrieving a surveillance device.
- (3) An authorisation may not be granted for the entry on or into residential premises, a building or land within the curtilage of a building.
- (4) The conduct that is authorised by an authorisation for the entry on or interference with property is any conduct that—
 - (a) consists of the entry on interference with property specified in the authorisation; and
 - (b) is carried out in the circumstances specified in the authorisation and for the purposes of, or in connection with, the investigation or operation specified in the authorisation.
- (5) In this section, “building” has the meaning given in section 22(4).

24. Renewal of authorisations

- (1) An authorisation may be renewed by an authorising officer at any time before it ceases to have effect.
- (2) However, an authorising officer must not renew an authorisation for the conduct or the use of a CHIS unless (in addition to being satisfied about the matters referred to in section 21(1)) the officer—
 - (a) is satisfied that a review has been carried out of the use made of the CHIS in the period since the grant or, as the case may be, latest renewal of the authorisation, the tasks given to the CHIS during that period and the information obtained from the conduct or the use of the CHIS; and
 - (b) has, for the purpose of deciding whether to renew the authorisation, considered the results of the review referred to in paragraph (a).
- (3) Sections 20 to 23 have effect in relation to the renewal of an authorisation as if references in those sections to the grant of an authorisation included references to its renewal.

25. Form of authorisations

- (1) An authorisation must be in writing.

- (2) However, an authorisation may be granted or renewed orally by an authorising officer whose entitlement to act is not confined to urgent applications.
- (3) Where an authorisation is granted or renewed orally, it must be recorded in writing as soon as reasonably practicable thereafter.
- (4) A single authorisation may combine 2 or more different authorisations under this Ordinance.
- (5) Where an authorisation combines 2 or more different authorisations, the provisions of this Ordinance that are applicable in the case of each of the authorisations apply separately in relation to the part of the combined authorisation to which they are applicable.

26. Taking effect and duration of authorisations

- (1) Except as provided in subsection (3), an authorisation takes effect at the time at which it is granted.
- (2) Except as provided in subsection (3), the renewal of an authorisation takes effect at 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.
- (3) An authorisation to which section 28 applies, or the renewal of such an authorisation, takes effect in accordance with subsection (5) of that section.
- (4) An authorisation referred to in column 1 of the table set out in this section ceases to have effect at the end of the period referred to in the corresponding entry in column 2 that begins with the day on which the authorisation or, as the case may be, its latest renewal, takes effect.

(1) Type of authorisation	(2) Period
Authorisation of covert surveillance under section 20	3 months
Authorisation of conduct or use of CHIS under section 21 (where the CHIS is under the age of 18 at the time the authorisation (or its latest renewal) is granted)	1 month
LP authorisation (unless the CHIS is under the age of 18 at the time the authorisation (or its latest renewal) is granted)	3 months
Authorisation of conduct or use of CHIS under section 18 (where the CHIS is 18 years of age or older at the time the authorisation (or its latest renewal) is granted and the authorisation is not an LP authorisation)	12 months
Authorisation of entry on or interference with property under section 22 or 23	3 months

- (5) However, an authorisation that was granted or, if the authorisation has been renewed, last renewed either orally or by an authorising officer whose entitlement to act is confined to urgent cases ceases to have effect at the end of the period of 72 hours beginning with the time at which the authorisation or, as the case may be, its latest renewal, takes effect.
- (6) Despite subsections (4) and (5), an authorisation may be cancelled before it would otherwise cease to have effect in accordance with section 29 or by the Tribunal.

27. Notification to Commissioner: LC authorisations, LP authorisations and authorisations of entry on or interference with property

- (1) This section applies to—
 - (a) an LC authorisation;
 - (b) an LP authorisation;
 - (c) an authorisation under section 22 or 23.
- (2) Where an authorising officer grants, renews or cancels an authorisation to which this section applies, the officer must give notice of the grant, renewal or cancellation to the Commissioner.

- (3) A notice under subsection (2)—
 - (a) must be given as soon as reasonably practicable after the grant, renewal or cancellation of the authorisation to which it relates;
 - (b) must be given in accordance with any arrangements made by the Commissioner for the purposes of this section;
 - (c) must contain the matters set out in Schedule 2; and
 - (d) must state whether the authorisation to which it relates is—
 - (i) an LC authorisation;
 - (ii) an LP authorisation; or
 - (iii) a CI authorisation or an authorisation for the entry on or interference with property that is not a CI authorisation.
- (4) A notice under subsection (2) that relates to the grant or renewal of an LC authorisation or CI authorisation must also—
 - (a) where the authorising officer thinks that the case is one of urgency, state that fact and set out the grounds on which the case is thought to be one of urgency; or
 - (b) in any other case, state that the approval of the Commissioner is required in accordance with section 28 before the authorisation takes effect.
- (5) A notice under subsection (2) that relates to the grant or renewal of an LP authorisation must also state that the approval of the Commissioner is required in accordance with section 28 before the authorisation takes effect.
- (6) Where a notice under subsection (2) that relates to the grant or renewal of an authorisation is received by the Commissioner, the Commissioner must, as soon as practicable,—
 - (a) scrutinise the authorisation;
 - (b) in the case of an LC authorisation in respect of which notice is given in accordance with subsection (4)(a) or in the case of a CI authorisation in respect of which such notice is given, decide whether or not to cancel the authorisation in accordance with section 29(2);
 - (c) in the case of any other LC authorisation or any other CI authorisation, decide whether or not to approve the authorisation in accordance with section 28;
 - (d) in the case of an LP authorisation, decide whether or not to approve the authorisation in accordance with section 28; and
 - (e) in the case of an authorisation for the entry on or interference with property that is not a CI authorisation, decide whether or not to cancel the authorisation in accordance with section 29(2).

28. Commissioner’s approval required: non-urgent LC authorisations, all LP authorisations and non-urgent CI authorisations

- (1) This section applies to—
 - (a) an LC authorisation;
 - (b) an LP authorisation; and
 - (c) a CI authorisation.
- (2) However, this section does not apply to an LC authorisation or a CI authorisation if the authorising officer who granted or renewed it—
 - (a) thinks that the case is one of urgency; and
 - (b) gives notice in accordance with section 27(4)(a).
- (3) The Commissioner must not approve an authorisation to which this section applies, or the renewal of such an authorisation, unless the Commissioner is satisfied that—
 - (a) in the case of an LC authorisation to which this section applies—
 - (i) there are reasonable grounds for believing that the requirements of section 20(1)(a)(i) and (b) are satisfied; and

- (ii) the conduct authorised by the authorisation is not conduct that, by virtue of section 20(3), (4) or (5), may not be authorised under this Ordinance;
- (b) in the case of an LP authorisation, there are reasonable grounds for believing that the requirements of section 21(1)(a)(i), (b) and (c) are satisfied;
- (c) in the case of a CI authorisation to which this section applies—
 - (i) there are reasonable grounds for believing that the requirements of section 22(1) are satisfied; and
 - (ii) the conduct authorised by the authorisation is not conduct that, by virtue of section 22(2), may not be authorised under this Ordinance.
- (4) Where the Commissioner does not approve an authorisation to which this section applies or the renewal of such an authorisation, the Commissioner must make a report of that decision to the relevant officer.
- (5) An authorisation to which this section applies, or the renewal of such an authorisation, does not take effect until—
 - (a) the authorisation or, as the case may be, renewal has been approved by the Commissioner; and
 - (b) written notice of the decision of that approval is given to the authorising officer.

29. Cancellation of authorisations

- (1) The authorising officer who granted or, as the case may be, last renewed an authorisation must cancel it before it would otherwise cease to have effect if the officer is satisfied—
 - (a) that the authorisation is one in relation to which the requirements of section 20(1), 21(1), 22(1) or 23(1), as the case may be, are no longer satisfied; or
 - (b) in the case of an authorisation under section 21, that arrangements for the CHIS's case that satisfy the requirements referred to in subsection (3) of that section no longer exist.
- (2) The Commissioner may cancel the grant or renewal of an LC authorisation, an LP authorisation or an authorisation for the entry on or interference with property at any time before it would otherwise cease to have effect if the Commissioner is satisfied that—
 - (a) in the case of an LC authorisation—
 - (i) there are no reasonable grounds, or are no longer any reasonable grounds, for believing that the authorisation is one in relation to which the requirements of section 20(1)(a)(i) and (b) are satisfied; or
 - (ii) the conduct authorised by the authorisation is conduct that, by virtue of section 20(3), (4) or (5), may not be authorised under this Ordinance;
 - (b) in the case of an LP authorisation, there are no reasonable grounds, or are no longer any reasonable grounds, for believing that the requirements of section 21(1)(a)(i), (b) and (c) are satisfied;
 - (c) in the case of an authorisation for the entry on or interference with property—
 - (i) there are no reasonable grounds, or are no longer any reasonable grounds, for believing that the authorisation is one in relation to which the requirements of section 22(1) or 23(1), as the case may be, are satisfied; or
 - (ii) the conduct authorised by the authorisation is conduct that, by virtue of section 22(2) or 23(3), may not be authorised under this Ordinance.
- (3) Where the Commissioner cancels an authorisation in accordance with subsection (2), the Commissioner must—
 - (a) give written notice of the cancellation to the authorising officer who granted or, as the case may be, last renewed the authorisation as soon as reasonably practicable; and
 - (b) make a report of the decision to the relevant officer.

30. Destruction of records

- (1) This section applies where the Commissioner cancels an LC authorisation, an LP authorisation or an authorisation for the entry on or interference with property.

- (2) This section also applies where—
- (a) an LC authorisation, an LP authorisation or an authorisation for the entry on or interference with property ceases to have effect otherwise than by cancellation by the Commissioner; and
 - (b) the Commissioner is satisfied that—
 - (i) in the case of an LC authorisation—
 - (aa) there was a time while the authorisation had effect when there were no reasonable grounds for believing that the requirements of section 20(1)(a)(i) and (b) were satisfied in relation to the authorisation; or
 - (bb) the conduct authorised by the authorisation was conduct that, by virtue of section 20(3), (4) or (5), may not be authorised under this Ordinance;
 - (ii) in the case of an LP authorisation, there was a time while the authorisation had effect when there were no reasonable grounds for believing that the requirements of section 21(1)(a)(i), (b) and (c) were satisfied in relation to the authorisation;
 - (iii) in the case of an authorisation for the entry on or interference with property—
 - (aa) there was a time while the authorisation had effect when there were no reasonable grounds for believing that the requirements of section 22(1) or 23(1), as the case may be, were satisfied in relation to the authorisation; or
 - (bb) the conduct authorised by the authorisation was conduct that, by virtue of section 22(2) or 23(3), may not be authorised under this Ordinance.
- (3) The Commissioner may order the destruction of any records relating wholly or partly to information obtained by the conduct authorised by the authorisation other than records required for pending criminal or civil proceedings.

Part 4

Investigatory Powers Tribunal

31. Tribunal established

- (1) A tribunal, to be known as the Investigatory Powers Tribunal, is established for the purposes of exercising the jurisdiction conferred by section 32.
- (2) Every Senior Judge^(f) is a member of the Tribunal.
- (3) The Administrator must appoint a member of the Tribunal as its President.
- (4) A member of the Tribunal who ceases to be a Senior Judge ceases also to be a member of the Tribunal.
- (5) The Administrator may pay to members of the Tribunal such allowances as the Administrator thinks appropriate.
- (6) The Administrator may, after consulting the Tribunal, provide the Tribunal with such staff as the Administrator thinks necessary for the proper discharge of its functions.
- (7) The Tribunal may authorise a member of staff provided under subsection (6) to obtain any documents or information on the Tribunal's behalf.
- (8) Subject to rules made under section 36, the functions of the Tribunal may be exercised from outside the Areas.

32. Tribunal's jurisdiction

- (1) The jurisdiction of the Tribunal is set out in subsections (2) to (4).
- (2) The Tribunal is the only appropriate court or tribunal for the purposes of section 9 of the Human Rights Ordinance 2004^(g) for bringing proceedings under subsection (1)(a) of that section (including proceedings brought by virtue of section 4 of the Protection of Property Ordinance 2004^(h)) that relate to the taking place in challengeable circumstances of relevant conduct.

- (3) The Tribunal must consider and determine any complaint made to the Tribunal by a person who is aggrieved by relevant conduct that the person believes to have taken place in challengeable circumstances in relation to—
 - (a) the person;
 - (b) the person's property;
 - (c) a communication sent by or to the person or intended for the person; or
 - (d) the person's use of a postal service or telecommunications system.
- (4) The Tribunal must consider and determine any other proceedings that are allocated to it in accordance with provision made by the Administrator by order made as a public instrument.
- (5) In this section, "relevant conduct" means conduct that is—
 - (a) conduct to which section 19 applies; and
 - (b) conduct of, or on behalf of, a person holding a rank, office or position with an investigating authority.
- (6) Except as provided in subsection (7), for the purposes of this section, conduct takes place in challengeable circumstance if—
 - (a) the conduct takes place with the authority, or purported authority, of an authorisation under this Ordinance;
 - (b) the circumstances are such that (whether or not there is such an authorisation) it would not have been appropriate for the conduct to take place without the authority of such an authorisation, or at least without proper consideration having been given to whether such authority should be sought; or
 - (c) the conduct is conduct that, by virtue of section 20(3), (4) or (5), 22(2) or 23(3) may not be authorised under this Ordinance.
- (7) Conduct does not take place in challengeable circumstances if—
 - (a) the conduct is authorised by, or takes place with the permission of, a judge of the Resident Judge's Court or the Senior Judges' Court; or
 - (b) the conduct is conduct to which section 42 applies.

33. Orders allocating proceedings to Tribunal

- (1) An order under section 32(4) allocating proceedings to the Tribunal—
 - (a) may provide for the Tribunal to exercise jurisdiction in relation to that matter to the exclusion of any court or tribunal; but
 - (b) if it does so provide, must contain provision conferring a power on the Tribunal, in the circumstances provided for in the order, to remit the proceedings to the court or tribunal which would have had jurisdiction apart from the order.
- (2) In making any provision by an order under section 32(4), the Administrator must have regard, in particular, to—
 - (a) the need to secure that proceedings allocated to the Tribunal are properly heard and considered; and
 - (b) the need to secure that information is not disclosed to an extent, or in a manner, that is contrary to the public interest or prejudicial to national security or the prevention or detection of crime.

34. Exercise of Tribunal's jurisdiction

- (1) Except as provided in subsections (4) and (5), the Tribunal must—
 - (a) hear and determine proceedings brought by virtue of section 32(2) or (4); and
 - (b) consider and determine complaints made by virtue of section 32(3).
- (2) Where the Tribunal hears proceedings brought by virtue of section 32(2), the Tribunal must apply the same principles for making its determination in those proceedings as would be applied by a court on an application for judicial review.

- (3) Where the Tribunal considers a complaint made by virtue of section 32(3), the Tribunal must—
 - (a) investigate whether the persons against whom any allegations are made in the complaint have engaged in any conduct to which section 19 applies in relation to the complainant or the complainant's property;
 - (b) investigate the authority (if any) for any such conduct that the Tribunal finds has been so engaged in; and
 - (c) in relation to the Tribunal's findings from its investigations, determine the complaint by applying the same principles as would be applied by a court on an application for judicial review.
- (4) The Tribunal is not under a duty to hear, consider or determine any proceedings or complaint if it appears to the Tribunal 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, is satisfied that it is equitable to do so, the Tribunal must not consider or determine any complaint made by virtue of section 32(3) if it is made more than 1 year after the taking place of the conduct to which it relates.
- (6) Subject to rules made under section 36, where any proceedings have been brought before the Tribunal, the Tribunal has the power to make such interim orders as the Tribunal thinks fit.
- (7) Subject to rules made under section 36, the Tribunal on determining any proceedings or complaint has the power to make any such award of compensation or other order as the Tribunal thinks fit; and, without limiting the power to make rules under section 36(2)(g), the other orders that may be made by the Tribunal include—
 - (a) an order cancelling an authorisation; and
 - (b) an order requiring the destruction of any records of information that—
 - (i) has been obtained in exercise of any power conferred by an authorisation; or
 - (ii) is held by an investigating authority in relation to a person.

35. Tribunal procedure

- (1) Subject to rules made under section 36, the Tribunal may determine its own procedure in relation to any proceedings or complaint brought before or made to it.
- (2) The Tribunal may, in connection with the investigation of any matter or otherwise for the purposes of its consideration or determination of any matter, 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 thinks fit.
- (3) Where the Tribunal hears or considers proceedings or a complaint relating to any matter, the Tribunal must secure that the Commissioner—
 - (a) is aware that the matter is the subject of the proceedings or complaint; 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 determines proceedings or a complaint, the Tribunal must give notice to the complainant which, subject to any rules made under section 36(2)(i), must be confined to either—
 - (a) a statement that a determination has been made in the complainant's favour; or
 - (b) a statement that no determination has been made in the complainant's favour.
- (5) Every person who holds or has held an office, rank or position with an investigating authority must disclose or provide to the Tribunal all such documents and information as the Tribunal may require for the purpose of enabling the Tribunal to carry out its functions.

36. Tribunal rules

- (1) The Administrator may make rules made by public instrument regulating—
 - (a) the exercise by the Tribunal of the jurisdiction conferred by section 32; and

- (b) any matters preliminary or incidental to, or arising out of, the hearing or consideration of any proceedings or complaint brought before or made to the Tribunal.
- (2) Without limiting subsection (1), rules under this section may—
- (a) enable the jurisdiction of the Tribunal to be exercised by any 1 or more members of the Tribunal designated for the purpose by the President of the Tribunal;
 - (b) enable different members of the Tribunal to carry out functions in relation to different complaints at the same time;
 - (c) prescribe the form and manner in which proceedings are to be brought before the Tribunal or a complaint is to be made to the Tribunal;
 - (d) 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 or reference is frivolous or vexatious;
 - (e) make provision about the determination of any question as to whether a person by whom proceedings have been brought or a complaint has been made is a person with a right to bring those proceedings or make that complaint;
 - (f) prescribe the forms of hearing or consideration to be adopted by the Tribunal in relation to particular proceedings or complaints (including a form that requires any proceedings brought before the Tribunal to be disposed of as if they were a complaint made to the Tribunal);
 - (g) prescribe orders that may be made by the Tribunal under section 34(6) or (7);
 - (h) 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);
 - (i) 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 35(4)) to the person who brought the proceedings or made the complaint or to that person's representative;
 - (j) require the jurisdiction of the Tribunal or any powers or duties conferred on it to be exercised or performed in a place specified in the rules.
- (3) Rules under this section in relation to the hearing or consideration of any matter by the Tribunal may provide—
- (a) for a person who has brought any proceedings before or made any complaint to the Tribunal to have the right to be legally represented;
 - (b) for the manner in which the interests of a person who has brought any proceedings before or made any complaint 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) The power to make rules under this section includes the power to make rules—
- (a) enabling or requiring the Tribunal to hear or consider any proceedings or complaint without the person who brought the proceedings or made the complaint having been given full particulars of the reasons for any conduct that is the subject of the proceedings or complaint;
 - (b) enabling or requiring the Tribunal to take any steps in the exercise of its jurisdiction in the absence of any person (including the person bringing the proceedings or making the complaint any legal representative of that person);
 - (c) enabling or requiring the Tribunal to give a summary of any evidence taken in the absence of the person bringing the proceedings or making the complaint to the person;
 - (d) enabling or requiring the Tribunal to exercise its jurisdiction, and to exercise and perform the powers and duties conferred on it (including, in particular, in relation to the giving of reasons), in such manner provided for in the rules as prevents or limits the disclosure of particular matters.

- (5) Rules under this section may also include provision—
 - (a) enabling powers or duties of the Tribunal that relate to matters preliminary or incidental to the hearing or consideration of any proceedings complaint or reference to be exercised or performed by a single member of the Tribunal;
 - (b) conferring on the Tribunal such ancillary powers as the Administrator thinks necessary for the purposes of, or in connection with, the exercise of the Tribunal's jurisdiction, or the exercise of performance of any power or duty conferred or imposed on it.
- (6) In making rules under this section, the Administrator must have regard, in particular, to—
 - (a) the need to secure that matters that are the subject of proceedings or a complaint brought before or made to the Tribunal are properly heard and considered;
 - (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 or the prevention or detection of crime.
- (7) Rules under this section may make provision by the application, with or without modification, of the provision from time to time contained in specified rules of court.

37. Tribunal's decisions not subject to appeal

Determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether the Tribunal has jurisdiction) are not subject to appeal and may not be questioned in any court.

Part 5

Miscellaneous

38. Issue and revision of codes of practice

- (1) The Administrator may issue 1 or more codes of practice relating to the exercise and performance of the powers and duties conferred or imposed by or under this Ordinance other than—
 - (a) those conferred or imposed on the Commissioner or the Tribunal;
 - (b) the power to make subordinate legislation;
 - (c) the power to issue a code of practice.
- (2) The Administrator may from time to time—
 - (a) revise the whole or any part of a code of practice; and
 - (b) issue the revised code of practice.
- (3) A code of practice (including a revised code of practice) must be published as a public instrument and be brought into force by the Administrator in accordance with an order made as a public instrument.
- (4) An order under subsection (3) may contain any transitional provisions and savings that appear to the Administrator to be necessary or expedient in relation to the bringing into force of the code of practice brought into force by that order.

39. Effect of codes of practice

- (1) A person exercising a power or performing a duty in relation to which provision may be made by a code of practice must, in doing so, have regard to the provisions (so far as they are applicable) of every code of practice.
- (2) A failure on the part of a person to comply with a provision of a code of practice does not of itself render the person liable to criminal or civil proceedings.
- (3) A code of practice is admissible in evidence in criminal or civil proceedings.
- (4) If a provision of a code of practice appears to the Commissioner or the court or tribunal conducting any criminal or civil proceedings to be relevant to a question arising in the proceedings, that provision of the code of practice is to be taken into account in determining the question.

40. Investigating authorities may make arrangements with each other

An investigating authority may make arrangements with another investigating authority for the purpose of securing that the requirements imposed by or under this Ordinance or a code of practice are complied with on behalf of the first-mentioned authority by the second-mentioned authority.

41. General saving for lawful conduct

Nothing in this Ordinance by virtue of which conduct may be authorised, or by virtue of which information may be obtained, is to be construed—

- (a) as making it unlawful to engage in conduct to which section 19 applies that is otherwise lawful;
- (b) as prejudicing any power to engage in conduct to which section 19 applies or to obtain information by means not involving such conduct;
- (c) as requiring an authorisation under this Ordinance to be granted before conduct to which section 19 applies is engaged in.

42. Conduct authorised under United Kingdom legislation, etc

- (1) This section applies to conduct in the Areas if—
 - (a) an authorisation by or under United Kingdom legislation confers an entitlement to engage in that conduct on the person whose conduct it is; and
 - (b) the person's conduct is in accordance with the authorisation.
- (2) Conduct to which this section applies is lawful for all purposes.
- (3) A person is not to be subject to any civil liability in respect of any conduct of the person that—
 - (a) is incidental to conduct that is lawful by virtue of subsection (2); and
 - (b) is not itself conduct an authorisation or warrant for which is capable of being granted under United Kingdom legislation and might reasonably have been expected to have been sought in the case in question.
- (4) This subsection applies to—
 - (a) proceedings relating to conduct in the Areas for which the tribunal established by section 65 of the Regulation of Investigatory Powers Act 2000 is, by virtue of subsection (2)(a) of that section, the only appropriate tribunal for the purposes of section 7 of the Human Rights Act 1998(i);
 - (b) any other proceedings, complaint or claim relating to conduct in the Areas that, in accordance with United Kingdom legislation, must or may be brought in that tribunal.
- (5) Proceedings, complaints and claims to which subsection (4) applies may not be brought in a court or tribunal of the Areas (including the Tribunal).
- (6) In this section, “United Kingdom legislation” means—
 - (a) Part 3 of the Police Act 1997;
 - (b) the Regulation of Investigatory Powers Act 2000;
 - (c) any legislation that replaces the legislation referred to in paragraphs (a) and (b).

SCHEDULE 1

COVERT HUMAN INTELLIGENCE SOURCES: RECORDS AND JUVENILES

(section 21(3)(d) and (9))

Meaning of relevant investigating authority

1. In this Schedule, “relevant investigating authority” has the meaning given by section 21(6); but the qualification in section 21(7) does not apply.

CHIS records

2. The matters referred to in section 21(3)(d) are—

- (a) the identity of the CHIS;
- (b) the identity, where known, used by the CHIS;
- (c) any relevant investigating authority other than the authority maintaining the records;
- (d) the means by which the CHIS is referred to within every relevant investigating authority;
- (e) any other significant information connected with the security or welfare of the CHIS;
- (f) any confirmation made by the authorising officer that the information in subparagraph (e) has been considered and that any identified risks to the security or welfare of the CHIS have, where appropriate, been properly explained to and understood by the CHIS;
- (g) the date on which and the circumstances in which the CHIS was recruited;
- (h) the identities of the persons who, in relation to the CHIS, are discharging or have discharged the functions mentioned in section 21(3)(a) to (c) and in paragraphs 4(2) and 5 of this Schedule;
- (i) the periods during which those persons have discharged those responsibilities;
- (j) the tasks given to the CHIS and the demands made of the CHIS in relation to activities as a CHIS;
- (k) all contacts or communications between the CHIS and a person acting on behalf of every relevant investigating authority;
- (l) the information obtained by every relevant investigating authority by the conduct or the use of the CHIS;
- (m) any dissemination by that authority of information obtained in that way;
- (n) in the case of a CHIS who does not hold an office, rank or position with a relevant investigating authority, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the CHIS’s activities for the benefit of that or another relevant investigating authority.

CHIS under 16: prohibition in case of parental, etc relationship

3. An authorisation for the conduct or the use of a CHIS who is under the age of 16 may not be granted or renewed if the relationship to which the conduct or the use would relate is between the CHIS and the parent of, or any person who has parental responsibility for, the CHIS.

CHIS under 16: arrangements for meetings

4. (1) Where a CHIS is under the age of 16, for the purposes of complying with section 21(1)(c), the requirements of section 21(3) must be taken to include the requirement in subparagraph (2) of this paragraph.

(2) The requirement is that such arrangements are in force as are necessary for ensuring that there will at all times be a person holding an office, rank or position with a relevant investigating authority who is responsible for ensuring that an appropriate adult is present at every meeting between the CHIS and a person representing a relevant investigating authority while the CHIS remains under the age of 16.

- (3) In sub-paragraph (2), “appropriate adult” means any of the following—
- (a) the parent or guardian of the CHIS;
 - (b) an adult who has for the time being assumed responsibility for the welfare of the CHIS;
 - (c) where no person falling within paragraph (a) or (b) is available, any responsible adult who does not hold an office, rank or position with a relevant investigating authority.

CHIS under 18: risk assessments, etc

5. (1) An authorisation for the conduct or the use of a CHIS who is under the age of 18 may not be granted or renewed unless—

- (a) a person holding an office, rank or position within a relevant investigating authority has made, and, in the case of a renewal, updated, a risk assessment sufficient to demonstrate that the nature and magnitude of any risk of physical injury and of any risk of psychological distress to the CHIS arising in the course of, or as a result of, carrying out the conduct described in the authorisation have been identified and evaluated;
- (b) the authorising officer has considered the risk assessment and is satisfied that any risks identified in it are justified and have been properly explained to and understood by the CHIS; and
- (c) where the relationship to which the conduct or the use would relate is between the CHIS and a close relative, guardian or person who has for the time being assumed responsibility for the CHIS’s welfare, the authorising officer has given particular consideration to whether the authorised conduct and use is proportionate.

(2) In this paragraph, “close relative” means parent, step-parent, grandparent, brother, sister, uncle or aunt.

SCHEDULE 2

CONTENTS OF NOTICES UNDER SECTION 27(2)

(section 27(3)(c))

Notices relating to grant of authorisation: LC authorisations

1. A notice under section 27(2) that relates to the grant of an LC authorisation must contain (in addition to any statement required by section 27(3)(d) or (4)) the following matters—

- (a) the nature of the authorised conduct;
- (b) the identity, where known, of the persons who are to be the subject of the authorised conduct;
- (c) whether the authorising officer considers that the authorised conduct is likely to lead to intrusion on the privacy of persons other than the persons who are to be the subject of the authorised conduct; and
- (d) the grounds on which the authorising officer is satisfied as to the matters in section 20(1)(a)(i) and (b).

Notices relating to grant of authorisation: LP authorisations

2. A notice under section 27(2) that relates to the grant of an LP authorisation must contain (in addition to any statement required by 27(3)(d) or (5)) the following matters—

- (a) the conduct referred to in section 12 that is authorised by the LP authorisation;
- (b) the identity, where known, of—
 - (i) the professional legal adviser and the adviser's client or any person representing the adviser's client to whom the activities of the CHIS relate; or
 - (ii) the professional legal adviser, the adviser's client or any person representing the adviser's client and any other person to whom the activities of the CHIS relate;
- (c) the matters subject to legal privilege (to the extent known) to which the conduct authorised by the LP authorisation relates;
- (d) whether the conduct authorised by the LP authorisation is likely to result in the obtaining of private information about any person who is not specifically identified in the notice for the purposes of the investigation or operation; and
- (e) the grounds on which the authorising officer is satisfied as to the matters in section 21(1)(a)(i), (b) and (c).

Notices relating to grant of authorisation: authorisations of entry on or interference with property

3. A notice under section 27(2) that relates to the grant of an authorisation of the entry on or interference with property must contain (in addition to any statement required by section 27(3)(d) or (4)) the following matters—

- (a) the nature of the authorised conduct, including details of any property to which the conduct relates;
- (b) the identity, where known, of the persons who are to be the subject of the authorised conduct;
- (c) whether the authorising officer considers that the authorised conduct is likely to lead to intrusion on the privacy of persons other than the persons who are to be the subject of the authorised conduct;
- (d) whether it will be necessary to retrieve any equipment used; and
- (e) the grounds on which the authorising officer is satisfied as to the matters in section 22(1) or 23(1), as the case may be.

Notices relating to renewal of authorisation

4. A notice under section 27(2) that relates to the renewal of an authorisation must contain (in addition to any statement required by section 27(3)(d), (4) or (5)) the following matters—

- (a) whether the authorisation is being renewed for the first time or, where it has been previously renewed, each occasion on which it has been renewed;
- (b) the matters required by paragraphs 1, 2 or 3, as the case may be, as they apply at the time of notice of renewal;
- (c) every respect in which the information provided in the previous notice has changed;
- (d) the reason why it is considered necessary to renew the authorisation;
- (e) the content and value to the investigation or operation of the information obtained to date through the conduct previously authorised;
- (f) the results of any reviews by the authorising officer; and
- (g) the period for which the authorisation is considered likely to continue to be necessary.

Notices relating to cancellation of authorisation

5. A notice under section 27(2) that relates to the cancellation of an authorisation must contain (in addition to the statement required by section 27(3)(d)) the following matters—

- (a) the date and time when the authorising officer cancelled the authorisation;
- (b) the reasons for cancelling the authorisation;
- (c) the outcome of the investigation or operation to which the authorisation related and details of any criminal proceedings instituted or intended to be instituted;
- (d) the arrangements that have been made for the storage of material obtained as a result of the conduct authorised, for its review and its destruction when its retention is no longer required, and for the immediate destruction of any material unrelated to the purposes for which the conduct was authorised.

Notes

- (a) 1997 c.50 (UK).
- (b) Ordinance 6/07, amended by Ordinances 1/11 and 15/11.
- (c) Ordinance 16/05.
- (d) 2005 c. 4 (UK).
- (e) 2000 c. 23 (UK).
- (f) Senior Judges are appointed under section 6 of the Courts (Constitution and Jurisdiction) Ordinance 2007.
- (g) Ordinance 9/04, amended by Ordinance 19/05.
- (h) Ordinance 35/04, amended by Ordinance 19/06.
- (i) 1998 c. 42 (UK).

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This explanatory note relates to the Regulation of Investigatory Powers Ordinance 2012 (the “Ordinance”). It has been prepared by the Office of the Attorney-General and Legal Adviser in order to assist the reader of the Ordinance and should be read in conjunction with it.
2. The Ordinance establishes a regime for authorising the use, by the SBA Police Service and the SBA Customs and Immigration Service (“investigating authorities”), of the following investigatory powers:
 - covert surveillance;
 - the use of a covert human intelligence source (“CHIS”);
 - the entry on or interference with property.
3. In addition, the Ordinance provides for independent judicial oversight of the use of the powers and provides a means of redress for the individual.
4. The Ordinance itself does not impose a requirement on an investigating authority to obtain an authorisation where one is available (see section 41). However, the consequences of not obtaining an authorisation may be that, say, where there is an interference with Article 8 ECHR rights and no other source of authority for the interference, the conduct is unlawful by virtue of section 8 of the Human Rights Ordinance 2004.

Part 1 (Preliminary)

5. Part 1 contains various definitions that are used in the Ordinance.
6. Authorisations for the use of investigatory powers under the Ordinance are granted by “authorising officers”. Sections 4 and 5 determine who the appropriate “authorising officer” is. This depends on whether the application to use investigatory powers is made by a police officer or a customs officer.
7. A “CI authorisation” is an authorisation for the entry on or interference with property likely to result in the acquisition of confidential journalistic information, confidential personal information or matters subject to legal privilege (section 6).
8. An “LC authorisation” is an authorisation for carrying out covert surveillance on certain premises (such as police stations) at a time when the premises are being used for a legal consultation (section 11).
9. An “LP authorisation” is an authorisation for the conduct of a CHIS to obtain, provide access to or to disclose matters subject to legal privilege (section 12).

Part 2 (Investigatory Powers Commissioner)

10. Part 2 relates to the Investigatory Powers Commissioner (the “Commissioner”). Appointed by the Administrator, the Commissioner must be a person who has held high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005) or has been a member of the Judicial Committee of Privy Council (section 14). The Commissioner may (but need not) be a UK Surveillance Commissioner appointed under section 91 of the Police Act 1997.
11. The Commissioner’s functions include keeping under review the operation of the Ordinance by investigating authorities and making an annual report to the Administrator (section 15). The Commissioner may delegate his or her functions to a UK Surveillance Commissioner or Assistant Surveillance Commissioner, staff provided by the Administrator or, if the Commissioner is a UK Surveillance Commissioner, to staff provided under section 91 of the Police Act 1997 (section 16). Police officers and customs officers must supply such information as the Commissioner may require for the purpose of carrying out his or her functions (section 17). The Commissioner’s decisions under the Ordinance are not subject to appeal (section 18).

Part 3 (Authorisation of investigatory powers)

12. Part 3 relates to the authorisation of the use investigatory powers. Covert surveillance,

the use of a CHIS and the entry on or interference with property is lawful for all purposes if the conduct is in accordance with an authorisation under the Ordinance (section 19). This means, for example, that a person who enters private property without the consent of the property owner, but in accordance with an authorisation, will not be a trespasser.

13. When authorising covert surveillance or the use of a CHIS, the authorising officer must be satisfied (1) that the authorisation is necessary for the purpose of preventing or detecting serious or imprisonable crime or of preventing disorder, in the interests of public safety or for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to the Crown; and (2) that the conduct authorised is proportionate to what is sought to be achieved by carrying it out (sections 20 and 21).

14. However, in the case of an LC authorisation or an LP authorisation, the authorising officer must be satisfied (1) that the authorisation is necessary for the purpose of preventing or detecting serious crime; and (2) that the conduct authorised is proportionate to what is sought to be achieved by carrying it out.

15. In the case of an authorisation for the use of a CHIS, the authorising officer must also be satisfied that arrangements exist that satisfy the requirements of section 21(3). These include, for example, the requirement that a person within the investigating authority will at all times have day-to-day responsibility for dealing with the CHIS's security and welfare. Section 21 is subject to Schedule 1, which makes provision in relation to the use of those under the age of 18 as a CHIS (section 21(9)).

16. The entry on or interference with property may be authorised if the authorising officer is satisfied that the authorisation is necessary for the purpose of preventing or detecting either serious crime (section 22) or relevant crime (section 23). In the latter case, the authorisation must be for the purposes of, or in connection with, the carrying out of covert surveillance authorised under section 20 and the authorisation must not be a CI authorisation. In both cases, the authorising officer must be satisfied (1) that consideration has been given as to whether it would be reasonably practicable to obtain permission to enter on or interfere with the property; and (2) that the conduct authorised is proportionate to what is sought to be achieved by carrying it out.

17. The Ordinance restricts the conduct for which an authorisation may be granted in a number of ways. For example, no authorisation may be granted for the carrying out of covert surveillance that consists of intercepting a communication in the course of transmission by means of a postal service or a telecommunications system or in relation to anything taking place on residential premises or in a private vehicle that involves the presence of an individual on the premises or in the vehicle (section 20(3) and (4)). Further, an authorisation to enter on or interfere with property may not be granted in respect of residential premises, a building or land within the curtilage of a building (section 22(2) and 23(3)).

18. An authorisation must be in writing (section 25). However, an authorisation may be granted orally by an authorising officer whose entitlement to act is not confined to urgent cases. If so, the authorisation must be recorded in writing as soon as reasonably practicable.

19. An authorisation for covert surveillance or for the entry on interference with property lasts for 3 months (section 26). An authorisation for the use of a person under the age of 18 as a CHIS lasts for 1 month. An authorisation for the use of an adult as a CHIS lasts for 12 months, but if the authorisation is an LP authorisation, it lasts for 3 months.

20. LC authorisations, LP authorisation and all authorisations for the entry on or interference with property must be notified to the Commissioner (section 27).

21. Urgent LC authorisations and all authorisations for the entry on land other than non-urgent CI authorisations take effect immediately (section 26). However, the Commissioner must scrutinise such authorisations as soon as practicable and decide whether or not to cancel them (section 27(6)).

22. Non-urgent LC authorisations, LP authorisations and non-urgent CI authorisations do not take effect until they have been approved by the Commissioner (section 28(5)).

23. An authorising officer must cancel an authorisation if the grounds for the authorisation are no longer satisfied (section 29).

Part 4 (Investigatory Powers Tribunal)

24. Part 4 relates to the Investigatory Powers Tribunal. The Tribunal is made up of Senior Judges (section 31). Its decisions are not subject to appeal (section 37).

25. The jurisdiction of the Tribunal is to determine proceedings and consider complaints in respect of the following conduct of investigating authorities:

- conduct that takes place with the authority of an authorisation under the Ordinance;
- conduct of a type that may be authorised under the Ordinance if the circumstances are such that it would not have been appropriate for the conduct to take place without an authorisation or at least proper consideration having been given to whether an authorisation should have been sought;
- conduct of a type that may not be authorised under this Ordinance by virtue of section 20(3), (4) or (5) or 22(2) or 23(3) - this includes, for example, the entry on residential premises.

26. The Tribunal is the only forum for bringing proceedings under section 9(1) of the Human Rights Ordinance 2004 against investigating authorities in respect of the above conduct (section 32(2)). This means that a person who alleges that the above conduct has unlawfully interfered with the person's Article 8 ECHR rights must bring proceedings in the Tribunal, rather than in court. In addition, the Tribunal may consider complaints made to the Tribunal by a person who is aggrieved by the above conduct (section 32(3)). The jurisdiction of the Tribunal may be extended by order under section 32(4).

27. When the Tribunal determines a complaint, the Tribunal must give notice to the complainant in accordance with section 35(4). Subject to any Tribunal rules made under section 36, the notice is confined to a statement that a determination has been made in the complainant's favour or a statement that no determination has been made in the complainant's favour.

28. Subject to any Tribunal rules made under section 36, the Tribunal may award compensation and order the cancellation of an authorisation or the destruction of records (section 34).

Part 5 (Miscellaneous)

29. Part 5 contains various miscellaneous provisions. Section 38 relates to the codes of practice, which are intended to explain in greater detail the practical arrangements relating to authorisations. A person exercising a function under the Ordinance must have regard to the provisions of the code of practice; but the failure to comply with the code of practice does not of itself constitute a criminal offence or give rise to liability in civil proceedings (section 39).

30. The Ordinance does not limit any powers that investigating authorities otherwise have to engage in conduct for which an authorisation under the Ordinance may be granted (section 41). So, for example, a police officer's power to enter property under other legislation is unaffected by the Ordinance.

31. Where United Kingdom investigating authorities use investigatory powers in the Areas in accordance with authorisations under Part 3 of the Police Act 1997 or under the Regulation of Investigatory Powers Act 2000, section 42 provides that conduct so authorised is lawful in the Areas. It is further provided that where a complaint about the conduct of United Kingdom investigating authorities may be brought in the United Kingdom Investigatory Powers Tribunal, a complaint may not be brought in a court or tribunal in the Areas.

Schedule 1 (Covert human intelligence sources: records and juveniles)

32. Schedule 1 sets out the matters that CHIS records must contain (see section 21(3)(d) and paragraph 2 of Schedule 1). Schedule 1 also makes provision in relation to the use of those under the age of 18 as a CHIS.

Schedule 2 (Contents of notices under section 27(2))

33. Section 27(2) requires notice to be given to the Commissioner of the grant, renewal and cancellation of certain authorisations. Schedule 2 sets out the detail of the matters that such notices must contain.

