



Private Security Personnel and Private Investigators (Code of Conduct—Surveillance of Individuals) Regulations 2011

Anand Satyanand, Governor-General

Order in Council

At Wellington this 28th day of March 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 115(1) of the Private Security Personnel and Private Investigators Act 2010, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Justice, makes the following regulations.

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Regulations

1 Title

These regulations are the Private Security Personnel and Private Investigators (Code of Conduct—Surveillance of Individuals) Regulations 2011.

2 Commencement

These regulations come into force on 1 April 2011.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Private Security Personnel and Private Investigators Act 2010

code means the code of conduct set out in regulation 6

intercept, in relation to a private communication, includes to hear, listen to, record, monitor, acquire, or receive the communication either—

- (a) while it is taking place; or
- (b) while it is in transit

interception device—

- (a) means any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept or record a private communication (including a telecommunication); but
- (b) does not include a hearing aid or similar device used to correct subnormal hearing of the user to no better than normal hearing

private activity means an activity that, in the circumstances, 1 or more of the participants ought reasonably to expect to be an activity that no one other than the participants would observe or record

private communication—

- (a) means a communication (whether in oral or written form, or in the form of a telecommunication, or other-

wise) made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but

- (b) does not include a communication of that kind occurring in circumstances in which any party to it ought reasonably to expect that it may be intercepted by some other person without the express or implied consent of any of those parties

private dwelling—

- (a) means any building or part of a building, and any structure or construction of any kind, that is used in whole or in part as a permanent or temporary residence; and
- (b) includes any garage, shed, and other building used in connection with a residence; but
- (c) excludes—
 - (i) any porch, veranda, patio, decking, or other unenclosed structure accessory to a residence; and
 - (ii) any part of a residence that is used exclusively for business purposes; and
 - (iii) the outdoor area around a residence

private property means any property or part of a property that, at the material time, the public do not have a general licence to enter; but does not include a private dwelling

public place means a place that, at the material time,—

- (a) is open to or is being used by the public, whether free or on payment of a charge, and whether or not any owner or occupier of the place is lawfully entitled to exclude or reject any person; and
- (b) includes, without limitation, any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward

surveillance equipment means equipment that is 1 or more of the following:

- (a) a visual surveillance device:
- (b) an interception device:
- (c) a tracking device

tracking device means a device that, when installed in or on a thing, may be used to help ascertain, by electronic or other means, either or both of the following:

- (a) the location of that thing or a person in possession of that thing;
- (b) whether a thing has been opened, tampered with, or in some other way dealt with

visual surveillance device—

- (a) means any electronic, mechanical, electromagnetic, optical, or electro-optical instrument, apparatus, equipment, or other device that is used or is capable of being used to observe, or to observe and record, a private activity; but
- (b) does not include spectacles, contact lenses, or a similar device used to correct subnormal vision of the user to no better than normal vision.

4 Application

This code applies to the following persons:

- (a) a private investigator, during the course of carrying on the business of a private investigator; and
- (b) a private investigator employee, during the course of performing his or her duties as a private investigator employee.

5 General law not limited or affected by code

- (1) Nothing in the code limits or affects the application of any rule of law or any other enactment relating to unlawful conduct.
- (2) Without limiting the generality of subclause (1), the application of the following enactments to private investigators and private investigator employees is not limited or affected by the code:
 - (a) the Privacy Act 1993;
 - (b) the Crimes Act 1961 (including Part 9A).

6 Code of conduct: surveillance of individuals

- (1) A person to whom this code applies may—
 - (a) undertake surveillance of an individual who is in a private dwelling only if—

- (i) every lawful occupier of the private dwelling has consented to the surveillance; or
 - (ii) the surveillance is undertaken—
 - (A) from a public place; and
 - (B) without the use of any surveillance equipment; or
 - (iii) the surveillance is undertaken using a tracking device that has been installed on or in any personal property in accordance with subclause (2)(c):
- (b) undertake surveillance of an individual who is in or on private property only if—
- (i) every lawful occupier of the private property has consented to the surveillance; or
 - (ii) the surveillance is undertaken from a public place and the actions of the individual can be observed without the aid of any equipment (including a visual surveillance device) from that public place; or
 - (iii) the surveillance is undertaken using a tracking device that has been installed on or in any personal property in accordance with subclause (2)(c):
- (c) undertake surveillance of an individual who is in any public place, or any part of a public place.
- (2) A person to whom this code applies may, for the purpose of undertaking surveillance of any individual, install surveillance equipment—
- (a) in a private dwelling only if every lawful occupier of the private dwelling has consented to the installation of the equipment:
 - (b) on or in any private property only if every lawful occupier of the property has consented to the installation of the equipment:
 - (c) on or in any personal property only if either—
 - (i) the owner of the property has consented to the installation of the equipment; or

- (ii) the person who is lawfully entitled to the possession of the property has consented to the installation of the equipment.
- (3) A person to whom this code applies (**person A**) must not cause any other person (**person B**) to act on behalf of person A in a way that person A is not permitted to act under subclause (1) or (2).

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 April 2011, are made under section 115(1) of the Private Security Personnel and Private Investigators Act 2010 (the **Act**). That section allows for regulations to be made prescribing codes of conduct under the Act.

Section 115(3) of the Act requires that regulations under subsection (1) set out a code of conduct in relation to the surveillance of individuals by private investigators and private investigator employees. These regulations prescribe such a code of conduct.

The code imposes requirements on private investigators and private investigator employees when undertaking surveillance of an individual, and these requirements differ according to whether the individual is—

- in a private dwelling:
- in, or on, private property (which excludes a private dwelling):
- in a public place.

The effect of these requirements is, for example, that a private investigator may not, without the consent of the occupants, photograph an individual who is in a house but may, with or without the consent of the occupants of the house, photograph an individual working in the garden if the individual can be seen from the street without using any visual surveillance device. Further, a private investigator may

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not, without the consent of an employer, enter a work place that is on private property to photograph an employee but may, with or without the consent of an employer, photograph an employee who is working in a public place or who can be seen from a public place without using any visual surveillance device.

The code also imposes requirements on private investigators and private investigator employees in relation to the installation of surveillance equipment. These requirements differ according to where it is proposed to install the equipment. In any case where it is proposed to install surveillance equipment in a private dwelling or on or in any property, the lawful occupiers of the private dwelling or private property must consent. In the case of personal property, such as a motor vehicle, a private investigator may not install surveillance equipment, for example, a tracking device on the vehicle, without the consent of either the owner of the vehicle or the person who has lawful possession of the vehicle.

Private investigators and private investigator employees may not undertake surveillance of an individual if that surveillance is not permitted by the code.

The code does not limit or affect any other enactment. For example, the code does not override the existing law regarding trespass or the use of interception devices. Existing laws continue to apply to private investigators and private investigator employees in the same way that they apply to all other persons.

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