
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 339

The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014

PART 3

Authorisation in relation to relevant sources

Notification of authorisation for conduct or use of relevant sources

7.—(1) A person who grants or renews an authorisation for the conduct or use of a relevant source must give notice of that authorisation to a Commissioner under this article unless the authorisation is a long term authorisation.

(2) A notice under paragraph (1) must—

- (a) be given in writing;
- (b) be given within 7 days of the grant or renewal of the authorisation; and
- (c) specify—
 - (i) the grounds on which the person giving the notice is satisfied that the requirements of section 7(2) of the Act are satisfied; and
 - (ii) the conduct that is, or is to be, authorised.

Long term authorisations

8.—(1) In this Part, an authorisation for the conduct or use of a relevant source is a long term authorisation if the periods mentioned in paragraph (2)(a) and (b), when taken together, exceed 12 months.

(2) The periods are—

- (a) the period for which the relevant source will be authorised under the authorisation; and
- (b) subject to paragraph (4), any period or periods for which that source has previously been authorised as a source in relation to the same investigation or operation.

(3) If a relevant source has been authorised previously as a source for a period or periods totalling less than 12 months, any further authorisation, unless renewed, ceases to have effect at the end of a period of 12 months from the date of the further authorisation, less the total period of any previous authorisation (and section 19(3)(b) of the Act has effect as if the period specified there were modified accordingly).

(4) When calculating the previous authorisation periods mentioned in paragraph (2)(b) or (3), the following are not to be taken into account—

- (a) any period for which the relevant source has been authorised as a source if that authorisation was granted orally or by a person whose entitlement to authorise is confined to urgent cases;

- (b) any authorisation of that source which ceased to have effect more than 3 years before the intended commencement date of the authorisation being notified under this Part; and
- (c) any period for which that source was authorised prior to 2nd February 2015 under an authorisation which is not in effect on that date.

(5) If an authorisation for the conduct or use of a relevant source is an authorisation to which Part 2 applies, the references in paragraphs (1) and (3) to 12 months are to be read as if they were references to 3 months.

Notification of long term authorisations

9.—(1) Before a person grants or renews a long term authorisation, that person must give notice to a Commissioner under this article.

(2) A notice under paragraph (1) must—

- (a) be given in writing;
- (b) state that the approval of a Commissioner is required before the authorisation may be granted or renewed; and
- (c) specify—
 - (i) the grounds on which the person giving the notice is satisfied that the requirements of section 7(2) of the Act are satisfied; and
 - (ii) the conduct that is, or is to be, authorised.

(3) In the case of a renewal of an authorisation, a notice under paragraph (1) must specify the information mentioned in paragraph (2) as it is understood at the time of the notice and must in addition specify—

- (a) whether the authorisation is being renewed for the first time or, if it has previously been renewed, each occasion on which it has been renewed;
- (b) why it is considered necessary to renew the authorisation;
- (c) the results of any review of the matters mentioned in section 19(7) of the Act; and
- (d) the period for which the authorisation is considered likely to continue to be necessary.

Approval required for grant or renewal of long term authorisations

10.—(1) If a Commissioner receives a notice under article 9(1), that Commissioner must, as soon as reasonably practicable, decide whether or not to approve the grant or renewal of the authorisation to which the notice relates.

(2) A Commissioner must—

- (a) approve the grant or renewal of the authorisation only if satisfied that there are reasonable grounds for believing that the requirements of section 7(2) of the Act are satisfied; and
- (b) give notice in writing of the Commissioner's decision to the person who gave notice under article 9(1) as soon as reasonably practicable after making that decision.

(3) If a Commissioner decides not to approve the grant or renewal of a long term authorisation, that Commissioner must give reasons in writing for that decision to the person who gave notice under article 9(1).

(4) A long term authorisation must not be granted or renewed unless—

- (a) it has been approved in accordance with this article by a Commissioner; and
- (b) notice of that Commissioner's approval has been given in accordance with paragraph (2) (b).

Appeals against decisions by Commissioners

11.—(1) Any person seeking approval for the grant or renewal of a long term authorisation may appeal to the Chief Surveillance Commissioner against any refusal of a Commissioner to approve any such authorisation.

(2) An appeal under this article must be made no later than 7 days from the date on which notice of the refusal is given under article 10(2)(b).

(3) The Chief Surveillance Commissioner must allow an appeal under this article if satisfied that there are reasonable grounds for believing that the requirements of section 7(2) of the Act are satisfied in relation to the proposed authorisation.