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STATUTORY INSTRUMENTS

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**2009 No. 3404**

The Regulation of Investigatory Powers  
(Covert Human Intelligence Sources: Matters  
Subject to Legal Privilege) Order 2009

PART 3

APPROVAL BY ORDINARY SURVEILLANCE  
COMMISSIONER OR SECRETARY OF STATE

**Approving officer**

- 4.—(1) Where the person designated for the purposes of section 29 of the 2000 Act is—
- (a) a member of any of the intelligence services,
  - (b) an official of the Ministry of Defence,
  - (c) an individual holding an office, rank or position in Her Majesty's Prison Service or the Northern Ireland Prison Service, or
  - (d) a member of Her Majesty's forces,

the approving officer for the purposes of this Part shall be the Secretary of State.

- (2) In any other case, the approving officer shall be an ordinary Surveillance Commissioner.

**Notification**

5.—(1) Before a person grants or renews an authorisation for conduct to which this Order applies, that person shall, in accordance with arrangements made by the relevant approving officer, give notice to the approving officer.

- (2) A notice under this article—
- (a) shall be given in writing to the relevant approving officer,
  - (b) shall state that the approval of an approving officer is required by article 6 before the authorisation is granted or renewed, and
  - (c) shall include the matters specified in paragraph (3) or, as the case may be, paragraph (4).

(3) Where a person gives notice under paragraph (1) seeking approval to grant an authorisation, the notice to the approving officer shall, in addition to the statement required by article 5(2)(b), specify—

- (a) the grounds on which the person giving the notice believes the matters specified in article 6(4) and section 29(2)(b) and (c) of the 2000 Act;
- (b) the conduct falling within article 3(1) that is, or is to be, authorised by the authorisation;
- (c) the identity, where known, of—
  - (i) the professional legal adviser and his client or any person representing his client, or

- (ii) the professional legal adviser or his client or any such representative and any other person,  
to whom the activities of the source relate;
  - (d) the matters subject to legal privilege (to the extent known) to which the conduct that is to be authorised by the authorisation relate; and
  - (e) whether the conduct to be authorised by the 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.
- (4) Where a person gives notice under paragraph (1) seeking approval to renew an authorisation, the notice to the approving officer shall, in addition to the statement required by article 5(2)(b), specify—
- (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 paragraph (3), as they apply at the time of the notice seeking approval to renew;
  - (c) every respect (if any) in which the information contained in the previous notice under this article 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 matters subject to legal privilege obtained from the conduct or the use of the source in the period since the grant of the authorisation;
  - (f) the results of any reviews of the matters mentioned in section 43(7) of the 2000 Act; and
  - (g) the period for which the authorisation is considered likely to continue to be necessary.
- (5) Any notice that is required by this article to be given in writing may be given, instead, by being transmitted by electronic means.

### **Approval required for grant or renewal of authorisations**

- 6.—**(1) An authorisation for conduct to which this Order applies shall not be granted or renewed until—
- (a) it has been approved in accordance with this article by the relevant approving officer, and
  - (b) written notice of the approving officer’s decision to approve the grant or renewal of the authorisation has been given, in accordance with paragraph (3)(b), to the person who gave notice under article 5.
- (2) Where an approving officer receives a notice under article 5, the approving officer shall as soon as is reasonably practicable—
- (a) scrutinise the authorisation, and
  - (b) decide whether or not to approve the grant or renewal of the authorisation.
- (3) The approving officer shall—
- (a) give his approval to the grant or renewal of the authorisation if, and only if, the approving officer is satisfied that there are reasonable grounds for believing that—
    - (i) the authorisation is necessary on grounds falling within paragraph (4), and
    - (ii) the requirements of section 29(2)(b) and (c) of the 2000 Act are satisfied in the case of the authorisation; and

- (b) give written notice of his decision to the person who gave notice under article 5 as soon as reasonably practicable after making that decision.
- (4) An authorisation is necessary on grounds falling within this paragraph if it is necessary—
  - (a) in the interests of national security;
  - (b) for the purpose of preventing or detecting serious crime; or
  - (c) in the interests of the economic well-being of the United Kingdom;
- (5) Any notice that is required by this article to be given in writing may be given, instead, by being transmitted by electronic means.

#### **Notices given by the Secretary of State**

7.—(1) Subject to paragraph (2), a notice of the Secretary of State’s decision to approve the grant or renewal of an authorisation under article 6(3)(b) shall not be given except under the hand of the Secretary of State.

- (2) In an urgent case in which—
  - (a) approval has been sought for the grant or renewal of an authorisation for conduct to which this Order applies by a member of any of the intelligence services, and
  - (b) the Secretary of State has expressly authorised the giving of the notice in that case,the notice may be given under the hand of a senior official.