
STATUTORY INSTRUMENTS

2013 No. 2788

INVESTIGATORY POWERS

The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013

<i>Made</i>	- - - -	<i>29th October 2013</i>
<i>Laid before Parliament</i>		<i>31st October 2013</i>
<i>Coming into force</i>	- -	<i>1st January 2014</i>

The Secretary of State, in exercise of the powers conferred by sections 29(2)(c), 29(7)(b), 30(1), (3) and (6), 43(8) and 78(5) of the Regulation of Investigatory Powers Act 2000⁽¹⁾, makes the following Order:

PART 1

General

Citation and commencement

1. This Order may be cited as the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order 2013 and shall come into force on 1st January 2014.

Interpretation

2. In this Order—

“the Act” means the Regulation of Investigatory Powers Act 2000;

“relevant source” means a source holding an office, rank or position with one of the following—

- (a) a police force maintained under section 2 of the Police Act 1996⁽²⁾,
- (b) the City of London Police Force,
- (c) the Metropolitan Police Force,
- (d) the Police Service of Northern Ireland,

(1) 2000 c.23.
(2) 1996 c.16.

- (e) the Police Service of Scotland,
- (f) the Ministry of Defence Police,
- (g) the Royal Navy Police,
- (h) the Royal Military Police,
- (i) the Royal Air Force Police,
- (j) the British Transport Police,
- (k) the National Crime Agency,
- (l) Her Majesty's Revenue and Customs, or
- (m) the Home Office;

“section 29 authorisation” means an authorisation for the conduct or the use of a source under section 29 of the Act;

“source” means covert human intelligence source.

Long Term Authorisation

3.—(1) In this Order a section 29 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) Those periods are—

- (a) the period for which the relevant source will be authorised under the authorisation, having regard (where relevant) to paragraph (4), and
- (b) any period or periods, other than a period or periods to which paragraph (3) or (5) applies, for which the relevant source has previously been authorised as a source in relation to the same investigation or operation.

(3) This paragraph applies to a period or periods for which the relevant source has been authorised as a source under a section 29 authorisation where that authorisation was granted orally or by a person whose entitlement to act is confined to urgent cases.

(4) For the purposes of paragraph (2)(a) where the period or periods in respect of which a relevant source has previously been authorised as a source is less than 12 months in total, any further authorisation will cease to have effect, unless renewed, at the end of a period of 12 months less the total period for which the source has previously been authorised and section 43(3) of the Act shall have effect as if the period specified in paragraph (b) of that subsection were modified accordingly.

(5) For the purposes of paragraphs (2)(b) and (4) any period of authorisation which ceased to have effect more than 3 years prior to the intended commencement date of the authorisation referred to at paragraph (2)(a) shall be disregarded.

(6) In respect of an authorisation to which article 8(1)(b) of the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010(3) applies references in paragraphs (1) and (4) of this article to 12 months should be read as references to 3 months.

PART 2

Notification to and Approval by Ordinary Surveillance Commissioner

Notification

4.—(1) Where a person grants a section 29 authorisation for the conduct or use of a relevant source he must give notice of that authorisation to an ordinary Surveillance Commissioner save where he is granting or renewing a long term authorisation.

(2) A notice under this article must—

- (a) be given in writing;
- (b) be given within 7 days of the grant; and
- (c) include the matters specified in paragraph (3).

(3) Where a person gives notice under this article in respect of the granting of an authorisation, the notice shall specify—

- (a) the grounds on which the person giving the notice believes the matters specified in article 5(6) and section 29(2)(b) and (c) of the Act are satisfied; and
- (b) the conduct that is, or is to be authorised under section 29 of the Act.

(4) 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 long term authorisation

5.—(1) A long term authorisation shall not be granted or renewed until—

- (a) it has been approved in accordance with this article by a Commissioner, and
- (b) written notice of the Commissioner's decision to approve the grant or renewal of the authorisation has been given, in accordance with paragraph (5) to the person seeking approval.

(2) A request for approval under this article must be made in writing and must include the matters specified in article 4(3) or, in the case of a renewal, the matters specified in paragraph (3) of this article.

(3) Where a person seeks approval under this article in respect of the renewal of a long term authorisation, the request shall 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 article 4(3), as they apply at the time of the request;
- (c) the reason why it is considered necessary to renew the authorisation;
- (d) the results of any reviews of the matters mentioned in section 43(7) of the Act.

(4) The Commissioner, following receipt of a request for approval under this article, 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.

(5) The Commissioner shall—

- (a) approve the grant or renewal of the authorisation if, and only if, satisfied that there are reasonable grounds for believing that—
 - (i) the authorisation is necessary on grounds falling within paragraph (6), and

- (ii) the requirements of section 29(2)(b) and (c) of the Act are satisfied in the case of the authorisation; and
 - (b) give written notice of his decision to the person seeking approval under this article as soon as reasonably practicable after making that decision.
- (6) 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 crime or of preventing disorder;
 - (c) in the interests of the economic well-being of the United Kingdom;
 - (d) in the interests of public safety;
 - (e) for the purpose of protecting public health; or
 - (f) for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department.
- (7) Anything required by this article to be made or given in writing may be made or given, instead, by being transmitted by electronic means.
- (8) For the purpose of this article “Commissioner” means ordinary Surveillance Commissioner.

Appeals against decisions by Surveillance Commissioners

- 6.—(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 an ordinary Surveillance Commissioner to approve any such authorisation.
- (2) An appeal under this article must be brought within the period of seven days beginning with the day on which notice of the refusal is given under article 5(5)(b).
- (3) The Chief Surveillance Commissioner, on an appeal under this article, shall allow the appeal if satisfied that there are reasonable grounds for believing the matters set out in article 5(5)(a).

PART 3

Prescribed Offices, Ranks and Positions in relation to Relevant Sources

Amendment of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010

7. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(4) is amended as set out in this Part.

Interpretation

8. After article 1(2) insert—

- “(3) In this Order “relevant source” means a source holding an office, rank or position with one of the following—
- (a) a police force maintained under section 2 of the Police Act 1996(5),
 - (b) the City of London Police Force,
 - (c) the Metropolitan Police Force,

(4) S.I. 2010/521.

(5) 1996 c.16.

- (d) the Police Service of Northern Ireland,
- (e) the Police Service of Scotland,
- (f) the Ministry of Defence Police,
- (g) the Royal Navy Police,
- (h) the Royal Military Police,
- (i) the Royal Air Force Police,
- (j) the British Transport Police,
- (k) the National Crime Agency,
- (l) Her Majesty's Revenue and Customs, or
- (m) the Home Office;

“section 29 authorisation” means an authorisation for the conduct or the use of a source under section 29 of the Act;

“source” means covert human intelligence source.”.

9.—(1) After article 1 insert—

“Long Term Authorisation

1A.—(1) In this Order a section 29 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) Those periods are—

- (a) the period for which the relevant source will be authorised under the authorisation, having regard (where relevant) to paragraph (4), and
- (b) any period or periods, other than a period or periods to which paragraph (3) or (5) applies, for which the relevant source has previously been authorised as a source in relation to the same investigation or operation.

(3) This paragraph applies to a period or periods for which the relevant source has been authorised as a source under a section 29 authorisation where that authorisation was granted orally or by a person whose entitlement to act is confined to urgent cases.

(4) For the purposes of paragraph (2)(a) where the period or periods in respect of which a relevant source has previously been authorised as a source is less than 12 months in total, any further authorisation will cease to have effect, unless renewed, at the end of a period of 12 months less the total period for which the source has previously been authorised.

(5) For the purposes of paragraphs (2)(b) and (4) any period of authorisation which ceased to have effect more than 3 years prior to the intended commencement date of the authorisation referred to at paragraph (2)(a) shall be disregarded.

(6) In respect of an authorisation to which article 8(1)(b) of the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010(6) applies references in paragraphs (1) and (4) of this article to 12 months should be read as references to 3 months.

(7) For the purposes of this article any period for which the relevant source has previously been authorised as a source in relation to the same investigation or operation prior to 1st January 2014 shall be disregarded save for any period in relation to an authorisation that is extant on that date.”.

Prescribed Offices, ranks and position with relevant public authorities

- 10. After article 3(1) insert—
 - “(1A) Part 1 to the Schedule has effect subject to Part 1A.”.
- 11. At the end of article 3(2)(a) omit “and” and insert—
 - “(aa) column (2) of Part 1A of the Schedule (being offices, ranks and positions with the relevant public authorities which are listed in relation to such entries in column (1) of that Part and which are relevant public authorities for the purposes of section 29 of the Act in relation to the authorisation of relevant sources), and”.

Additional offices, ranks and positions prescribed for urgent cases

- 12. In article 4(2) after “(for the purposes of section 28 or 29 of the Act in the case of an entry in Part 1 of the Schedule” insert “or for the purposes of section 29 only in the case of an entry in Part 1A”.

Restrictions on the granting of authorisations

- 13. After article 5(1)(a) insert—
 - “(aa) section 29(3) of the Act in the case of an entry in Part 1A, or”.
- 14. After article 5(2)(a) insert—
 - “(aa) section 29(3) of the Act in the case of an entry in Part 1A, or”.
- 15. After article 6 insert—
 - “6A. Where an entry in column (2) of Part 1A of the Schedule is headed by reference to an authorisation of a relevant source or to an authorisation for a long term authorisation, an authorisation may only be granted by the individual holding the office, rank or position listed in an entry under the relevant heading.”.

Schedule

- 16.—(1) In Part 1 of the Schedule for the entry for Home Office substitute—

“Home Office	Immigration Inspector or Senior Officer with responsibility for immigration and border security investigations and functions	Chief Officer or Higher Officer with responsibility for immigration and border security investigations and functions	Immigration or Higher with responsibility for immigration and border security investigations and functions	Paragraphs (b) and (c)
	Immigration Inspector or Senior Executive Officer with responsibility for security and intelligence in detention services (Immigration Removal Centres)			Paragraphs (b) and (d)

Section 28 authorisation	Section 28 authorisation	Paragraph (b)”
The Head of the Unit responsible for anti-corruption investigations and functions	Immigration Inspector or Senior Executive Officer with responsibility for anti-corruption investigations and functions	

(2) After Part 1 of the Schedule insert—

“PART 1A

Offices etc and Restrictions In Respect of Public Authorities Specified in Part 1 of Schedule 1 to the Act in Relation to Relevant Sources

(1)	(2)	(3)	(4)
Relevant public authorities	Prescribed offices etc	Urgent cases	Grounds set out in section 29(3) of the Act
A police force maintained under section 2 of the Police Act 1996	Relevant Source Authorisation Assistant Chief Constable Long Term Authorisation Chief Constable	Superintendent	Paragraphs (a), (b), (c), (d) and (e)
The City of London Police Force	Relevant Source Authorisation Commander Long Term Authorisation Commissioner	Superintendent	Paragraphs (a), (b), (c), (d) and (e)
The Metropolitan Police Force	Relevant Source Authorisation Commander Long Term Authorisation	Superintendent	Paragraphs (a), (b), (c), (d) and (e)

	Assistant Commissioner		
The Police Service of Northern Ireland	Relevant Source Authorisation	Superintendent	Paragraphs (a), (b), (c), (d) and (e)
	Assistant Chief Constable		
	Long Term Authorisation		
	Chief Constable		
The Police Service of Scotland	Relevant Source Authorisation	Superintendent	Paragraphs (a), (b), (c), (d) and (e)
	Assistant Chief Constable		
	Long Term Authorisation		
	Chief Constable		
The Ministry of Defence Police	Relevant Source Authorisation	Superintendent	Paragraphs (a), (b) and (c)
	Assistant Chief Constable		
	Long Term Authorisation		
	Chief Constable		
The Royal Navy Police	Relevant Source Authorisation	Lieutenant Commander	Paragraphs (a), (b) and (c)
	Commander		
	Long Term Authorisation		
	Provost Marshal (Navy)		
The Royal Military Police	Relevant Source Authorisation	Major	Paragraphs (a), (b) and (c)
	Colonel		
	Long Term Authorisation		
	Provost Marshal (Army)		
The Royal Air Force Police	Relevant Source Authorisation	Squadron Leader	Paragraphs (a), (b) and (c)
	Wing Commander		

**Long Term
Authorisation**

Provost Marshal (Royal
Air Force)

The British Transport Police **Relevant Source** Superintendent Paragraphs (a), (b), (c), (d)
Authorisation and (e)

Assistant Chief Constable

**Long Term
Authorisation**

Chief Constable

The National Crime Agency **Relevant Source** Grade 2 Senior Manager Paragraph (b)
Authorisation

Deputy Director

**Long Term
Authorisation**

Deputy Director General

Her Majesty's Revenue and Customs **Relevant Source** Senior Officer Paragraphs (a), (b), (d), (e)
Authorisation and (f)

Assistant Director

**Long Term
Authorisation**

Director Criminal
Investigation

The Home Office **Relevant Source** Grade 6 with Paragraphs (b), (c) and
Authorisation responsibility for criminal (d)"

Senior Civil Service
pay band 1 with
responsibility for criminal
investigations in relation
to immigration and
border security

**Long Term
Authorisation**

Director General with
responsibility for criminal
investigations in relation
to immigration and
border security

PART 4

Transitional Arrangements

17.—(1) This Order does not affect the continued operation of authorisations granted or renewed under section 29 of the Act before this Order comes into force.

(2) For the purposes of article 3 any period for which the relevant source has previously been authorised as a source in relation to the same investigation or operation prior to the coming into force of this Order shall be disregarded save for any period in relation to an authorisation that is extant on the date that this Order comes into force.

Home Office
29th October 2013

Damian Green
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order introduces a notification and prior approval regime in relation to certain categories of Covert Human Intelligence Sources (CHIS), namely relevant sources, as well as an enhanced authorisation regime.

Part 1 of the Order contains general provisions.

Article 2 defines a ‘relevant source’.

Article 3 modifies section 43(3) of the Act in relation to a ‘long term authorisation’ and defines what it is and how it is calculated.

Articles 3(1), (2) and (4) provide that only once a relevant source has been authorised for a period of 12 months in total in relation to the same investigation or operation does any subsequent authorisation become a long term authorisation.

Articles 3(3) and (5) ensure that certain periods are disregarded from the calculation, namely periods in respect of which authorisations were granted orally or by a person whose authority to act is confined to urgent cases and periods more than 3 years prior to the intended date of authorisation.

Article 3(6) modifies the definition of a long term authorisation by reducing the period of 12 months down to 3 in respect of authorisations involving access to legally privileged material. This is to provide consistency with the authorisation periods in the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010.

Part 2 of the Order contains provisions requiring notification of authorisations to and prior approval of certain authorisations from an ordinary Surveillance Commissioner.

Article 4 requires notice to be given (although not necessarily in advance) of the grant of an authorisation for a relevant source, save where the authorisation is for the grant or renewal of a long term authorisation. Article 4(3) sets out the particulars to be provided.

Article 5 provides that prior approval must be sought from an ordinary Surveillance Commissioner in respect of the grant or renewal of a long term authorisation and sets out the criteria to be applied, both in respect of any request for approval and the Commissioner’s decision.

Article 6 creates an appeal mechanism where a request for prior approval is refused.

Part 3 of the Order creates an enhanced authorisation regime both in relation to the conduct or use of relevant sources and the long term authorisation of the same.

Articles 7 to 16 make a number of amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010.

Article 16(1) amends the entry in Part 1 of the Schedule to the 2010 Order in relation to the Home Office. This is to prescribe the offices, positions and ranks of those within the Home Office who can authorise activity for the purposes of sections 28 and 29 of the Act following the abolition of the UK Border Agency.

Article 16(2) inserts a new Part 1A into the Schedule.

Part 1 will continue to prescribe the offices, positions and ranks of those within the public authorities specified who can authorise activity for the purposes of sections 28 and 29 of the Act, subject to Part 1A (this is provided for by Article 10).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Part 1A prescribes the offices, positions and ranks of those within the public authorities specified who can authorise the conduct or use of relevant sources or who can grant long term authorisation of the same. In respect of the Home Office, authorisations for different purposes will be linked to related statutory functions. Thus, authorisations in respect of detention services can only be authorised on the grounds set out in paragraphs (3)(b) and (3)(d) of section 29 of the Act. Authorisations in respect of border security can only be authorised on the grounds set out in paragraphs (3)(b) and (3)(c) of section 29 of the Act. Articles 10 to 15 contain consequential amendments to the 2010 Order following the insertion of part 1A into the Schedule.

Part 4 of the Order contains transitional provisions. With respect to the calculation of the 12 month period in article 3, only authorisations that are extant at the time the Order comes into force can be taken into account.