
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 339

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

PART 2

Communications subject to legal privilege

Communications subject to legal privilege

3.—(1) This Part applies to the grant or renewal of an authorisation for the conduct or use of a source to—

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

(2) Where a single authorisation authorises conduct mentioned in paragraph (1) and other conduct authorised by the Act, this Part applies only in relation to those parts of the combined authorisation which authorise conduct mentioned in paragraph (1).

Notification

4.—(1) Before a person grants or renews an authorisation for conduct to which this Part applies, 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;
- (c) specify the grounds on which the person giving the notice is satisfied that—
 - (i) the requirements of section 7(2) of the Act are satisfied; and
 - (ii) the authorisation is necessary for the purpose of preventing or detecting serious crime;
- (d) specify the conduct that is, or is to be, authorised;
- (e) specify the identity, where known, of any person—
 - (i) to whom the activities of the source relate; and
 - (ii) with whom communications subject to legal privilege may take place;
- (f) specify any communications subject to legal privilege (to the extent known) to which the conduct that is, or is to be, authorised relates; and
- (g) specify whether the conduct that is, or is to be, authorised 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.

(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) any change in the information contained in the notice since the last notice under this article;
- (c) why it is considered necessary to renew the authorisation;
- (d) the content and value to the investigation or operation of the communications subject to legal privilege obtained from the conduct or the use of the source in the period since the grant of the authorisation or the last renewal;
- (e) the results of any review of the matters mentioned in section 19(7) of the Act; and
- (f) the period for which the authorisation is considered likely to continue to be necessary.

Approval required for grant or renewal of authorisations

5.—(1) If a Commissioner receives a notice under article 4(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—
 - (i) the requirements of section 7(2) of the Act are satisfied; and
 - (ii) the authorisation is necessary for the purpose of preventing or detecting serious crime; and
- (b) give notice in writing of the Commissioner’s decision to the person who gave notice under article 4(1) as soon as reasonably practicable after making that decision.

(3) If a Commissioner decides not to approve the grant or renewal of an authorisation under paragraph (1), that Commissioner must give reasons in writing for that decision to the person who gave notice under article 4(1).

(4) An authorisation for conduct to which this Part applies 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).

Duration

6. For the purposes of an authorisation for conduct to which this Part applies, paragraph (b) of section 19(3) of the Act has effect as if the period specified in that paragraph were three months.