

# REGULATION OF INVESTIGATORY POWERS ACT 2000

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## EXPLANATORY NOTES

### OTHER AUTHORISATIONS

#### *Grant, renewal and duration of authorisations*

#### **Section 43: General rules about grant, renewal and duration**

236. This section sets out the general rules for authorisations, including their granting, renewal, and duration.
237. *Subsection (1)* provides that, in urgent cases, an authorising officer may give an oral authorisation. All other authorisations must be in writing.
238. A single authorisation may be given, combining two or more authorisations under this part. When this occurs, the provisions of this Part which relate to one type of activity only shall apply to those parts of the authorisation which authorises that type of activity. Further provisions for combined authorisations are in section 33(5), 42(2) and 44(7).
239. Oral authorisations and those granted by officers entitled to act in urgent cases in the absence of the authorising officer or his designated deputy will expire after 72 hours, beginning with the time when the grant or renewal of an authorisation takes effect.
240. Except where granted or renewed orally or by an officer entitled to act in urgent cases, authorisations for the conduct or the use of covert human intelligence sources will last for 12 months, beginning with the day on which the grant or renewal takes effect.
241. In all other cases (except those made under the special provisions for the intelligence services contained in section 44), the authorisation will last for 3 months, beginning with the day on which the grant or renewal takes effect.
242. *Subsection (4)* provides that an authorisation may be renewed at any time before it ceases to have effect by any person entitled to grant a new authorisation of the same type. The same conditions attach to a renewal of surveillance as to the original authorisation. However, before renewal of an authorisation for the use or conduct of a covert human intelligence source, *subsection (6)* requires there to be a review of the use made of that source, the tasks given to that source and the information so obtained.
243. *Subsection (8)* enables the Secretary of State, by order, to provide that certain authorisations will cease to have effect after a shorter period of time than is otherwise provided for.
244. *Subsection (9)* clarifies the time from which a grant or renewal of an authorisation takes effect. It synchronises the duration of authorisations with those given for interference with property.

#### **Section 44: Special rules for intelligence services authorisations**

245. This section sets out special provisions in relation to authorisations granted to or by the intelligence services.
246. Under *subsection (1)*, a warrant for intrusive surveillance or a renewal of such a warrant will not be issued except under the hand of the Secretary of State. However, in an urgent case, where the Secretary of State has personally authorised it, a warrant can be signed (but not renewed) by a senior official. This is the same urgency procedure as is provided in section 7(2)(a) for interception. Where this has happened, such a warrant will cease to have effect at the end of the second working day following its issue, unless renewed under the hand of the Secretary of State.
247. *Subsections (4) and (5)* relate to the authorisation of warrants for the intelligence services and for the authorisations and renewal of authorisations for directed surveillance where the authorisation is necessary in the interests of national security or in the interests of the economic well-being of the UK. Such warrants or authorisations last for a period of six months. Where this is a renewal, the period will start on the day when the previous authorisation or warrant would have expired. This is consistent with the provisions of the Intelligence Service Act 1994.
248. *Subsection (6)* enables the Secretary of State, by order, to provide that certain authorisations will cease to have effect after a shorter period of time than is otherwise provided for.

#### **Section 45: Cancellation of authorisations**

249. *Subsection (1)* sets out when the person who granted or renewed an authorisation must cancel it.
250. *Subsection (2)* sets out who else is responsible for cancelling the authorisation eg the person who would have granted it if it had not been an urgent case or been granted by a deputy. However, an authorising officer's deputy (defined in *subsections (6) and (7)*) is also under a duty to cancel an authorisation in those cases where he would have had the power to grant the authorisation on the authorising officer's behalf.
251. *Subsections (4) and (5)* provide for the Secretary of State to make regulations setting out how the duty for cancelling authorisations should be performed where the authorising officer is no longer available, and on whom such a duty should fall.

#### **Section 46: Restrictions on authorisations extending to Scotland**

252. This section prevents the granting or renewal of an authorisation under this Part for activity by a public authority in Scotland if all the conduct authorised is likely to take place in Scotland, unless the authorisation is one for which the Act is (under subsection (2)) the relevant statutory provision. Thus it does not prevent:
- those seeking authorisation on the grounds of it being in the interests of national security or the economic well-being of the UK;
  - the intelligence agencies;
  - the Ministry of Defence, the Ministry of Defence Police or HM Armed Forces;
  - Customs and Excise;
  - the British Transport Police; or
  - any other public authority named by order as having authority for all parts of the UK;
- from obtaining an authorisation under this Act notwithstanding that all the conduct might take place in Scotland.