[Exhibit 3]

The underlined parts of this document indicate that it has been gisted for OPEN

Updated: January 2015

ISA Section 7 guidance

ISA authorisations

An ISA s7 authorisation given by the Secretary of State is the legal instrument that removes criminal liability in the UK for GCHQ actions overseas which might otherwise be an offence in UK law. Such an authorisation is also capable of removing any civil liability in the UK that might arise as a result of GCHQ's actions overseas. GCHQ primarily uses s7 authorisations for CNE operations. An ISA s7 authorisation may be specific to a particular operation or target, or may relate to a broad class of operations. Wherever possible, GCHQ seeks to rely on class authorisations with an underlying system of internal approvals.

The Section 7 Guidance sets out the 'class authorisations' signed by the Secretary of State under section 7 of the ISA which are used by GCHQ for the majority of its active internet-related operations. In respect of the authorisations relevant to CNE the Section 7 Guidance states that it permits interference with computers and communication systems overseas and removes liability under the Computer Misuse Act 1990 for interference with target computers or related equipment overseas (for this sort of activity, it is the location of the target computer which is relevant). The interference includes CNE operations.

Class authorisations are signed by the Foreign Secretary and need to be renewed every six months. Relevant personnel in GCHQ are responsible for overseeing the renewal process. Prior to expiry of the authorisations, they will ask analysts to briefly (re)justify the necessity and proportionality of continuing to rely on all extent section 7 internal approvals for which they are the lead, as well as asking for feedback on the outcomes of operations conducted. Providing feedback to the Foreign Secretary on the value of operations conducted under the class authorisations is crucial in justifying their renewal.

ISA section 7 internal approvals

A condition of section 7 class authorisations is that GCHQ operates an internal section 7 approval process to record its reliance on these authorisations. Before tasking the operational team to conduct CNE operations, analysts are required to complete a request form including a detailed business case described the necessity and proportionality of conducting operations against the targets. The request also sets out the likely political risk. The request must be endorsed by a senior member of the operational team before it is passed to an appropriately

senior official for approval. A copy of the signed final version of the approval is sent to FCO for information. This process provides the necessary reassurance to FCO that operations carried out under the class authorisations are necessary, justified and proportionate. Under a section 7 internal approval sits a third layer of authorisation: Additions (see below for details).

Section B – business case/necessity/proportionality:

The business case should include:

- the intelligence background;
- the priority in the priorities framework;
- an explanation of why the operations against the target set are necessary;
- the intelligence outcome(s) the proposed CNE activities are expected to produce.

You should also consider the level of intrusion the proposed operations will involve and how proportionality will be maintained. Key points to consider include:

- the expected degree of intrusion into a target's privacy and whether any personal or private information will be obtained;
- the likelihood of collateral intrusion, i.e. invading the privacy of those who are not targets, such as family members;
- whether the level of intrusion is proportionate to the expected intelligence benefit;
- any measures to be taken to ensure proportionality.

Based on all the information provided, relevant personnel will ensure that the section 7 internal approval is suitable for referral to an appropriately senior GCHQ official for signature. That official will review all the matters relevant to the application to satisfy himself that the proposed activity is justified, necessary and proportionate, including validating the assessment of political risk. He will also set the review period for the internal approval, which will be shorter for particularly sensitive operations.

The Section 7 Guidance also deals with the situation where there is a significant change to an existing approval, or when a new target is proposed with the result that an "addition" to an existing approval is required.

Cancelling a section 7 internal approval

To show due diligence and as a condition of relying on the class authorisations, section 7 internal approvals should be cancelled when an operation is no longer needed. To help ensure that this happens, the relevant personnel will ask whether section 7 internal approvals are still needed as part of the class authorisation renewals process, and if so will seek a brief rejustification of the continuing necessity and proportionality. The number of approvals signed or cancelled is provided to the Foreign Secretary with the case for renewal.

It is important to cancel an internal approval as soon as it is no longer required.[1]

When a section 7 internal approval is no longer required, the analyst should ask the operational team point of contact to cease operations and remove all tasking. The relevant personnel will not formally cancel the approval until the operational team confirms that the operation is fully drawn down.

Reviewing section 7 internal approvals

In addition to the reviews that are carried out in support of the renewal of the class authorisations when analysts are required to briefly (re)justify the necessity and proportionality of continuing to rely on all extant internal approvals for which they are the lead, there is a rolling programme of fully revalidating all extant section 7 internal approvals. This revalidation mirrors the process for obtaining a new internal approval: an updated business case (covering justification, necessity, proportionality and intrusion into privacy) is provided by the lead analyst; the operational team confirm that they are still operating within the risk thresholds set when the internal approval was signed; the endorser confirms that the assessment of the likely political risk is still correct; then continued operations may be approved and a new review date set if no significant changes have been made (or the review of the approval is passed to a GCHQ official of appropriate seniority.)

New review history and cancellation forms will be appended at each review point. The intention is to leave the original submission intact, so that there is an audit trail of what was originally submitted/approved. If there are any updates to be made, these will be included in the review history so that there is an ongoing record at each review of what was decided and why.

A monthly summary report which summarises new s.7 approvals, reviews of s.7 approvals and cancellations, and also attaches copies of new approvals, is also sent to the relevant senior official at the FCO.

[1] Underlining in the original.