
D R A F T S T A T U T O R Y I N S T R U M E N T S

2010 No.

INVESTIGATORY POWERS

**The Regulation of Investigatory Powers (Directed Surveillance
and Covert Human Intelligence Sources) Order 2010**

Made - - - - - *2010*

Coming into force - - - - - *6th April 2010*

This Order is made in exercise of the powers conferred on the Secretary of State by sections 30(1), (3), (5) and (6) and 78(5) of the Regulation of Investigatory Powers Act 2000(a).

In accordance with section 30(7) of that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State makes the following Order—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 and shall come into force on 6th April 2010.

(2) In this Order “the Act” means the Regulation of Investigatory Powers Act 2000.

Amendment of Parts 1 and 2 of Schedule 1 to the Act

2.—(1) Schedule 1 to the Act (relevant public authorities) is amended as follows.

(2) In Part 1 (relevant public authorities for the purposes of sections 28 and 29) omit—

- (a) paragraph 4A (the force comprising the special constables appointed under section 79 of the Harbours, Docks and Piers Clauses Act 1847(b) on the nomination of the Dover Harbour Board)(c),
- (b) paragraph 10 (the Ministry of Defence),
- (c) paragraph 15B (the Department for Work and Pensions)(d),
- (d) paragraph 20D (the Postal Services Commission)(e), and

(a) 2000 c.23.
(b) 1847 c.27 (10 & 11 Vict.).
(c) Inserted by S.I 2005/1084.
(d) Inserted by S.I 2002/1397.
(e) Inserted by S.I. 2003/3171.

(e) paragraph 23 (a universal service provider (within the meaning of the Postal Services Act 2000(a)) acting in connection with the provision of a universal postal service (within the meaning of that Act))(b).

(3) In that Part, for paragraph 17A (any fire authority within the meaning of the Fire Services Act 1947)(c) substitute—

“17A. Any fire and rescue authority under the Fire and Rescue Services Act 2004(d).”

(4) In that Part, after paragraph 20F(e) insert—

“20G. The Health and Safety Executive.”

(5) In Part 2 (relevant public authorities for the purposes only of section 28) omit paragraph 24 (the Health and Safety Executive).

(6) In that Part, after paragraph 28 insert—

“The Child Maintenance and Enforcement Commission

28A. The Child Maintenance and Enforcement Commission.

Special constables nominated by the Dover Harbour Board

28B. The force comprising the special constables appointed under section 79 of the Harbours, Docks and Piers Clauses Act 1847 on the nomination of the Dover Harbour Board.

The Department for Work and Pensions

28C. The Department for Work and Pensions.

The Postal Services Commission

28D. The Postal Services Commission

Universal service providers

28E. A universal service provider (within the meaning of the Postal Services Act 2000) acting in connection with the provision of a universal postal service (within the meaning of that Act).”

Prescribed offices, ranks and position with relevant public authorities

3.—(1) The Schedule to this Order has effect.

(2) Subject to the restrictions in articles 5 to 7, the offices, ranks and positions listed in the entries in—

(a) column (2) of Part 1 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 sections 28 and 29 of the Act), and

(b) column (2) of Part 2 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 28 of the Act only),

are prescribed for the purposes of section 30(1) of the Act.

(3) Where an office, rank or position with a relevant public authority is prescribed by virtue of article 3(2), all more senior offices, ranks or positions with that authority are also prescribed for the purpose of section 30(1) of the 2000 Act, subject to article 8.

(a) 2000 c.26.

(b) Amended by S.I. 2001/1149.

(c) Inserted by S.I. 2003/3171.

(d) 2004 c.21.

(e) Inserted by S.I. 2006/1874.

(4) Where an office, rank or position with a relevant public authority is described in column 2 of the Schedule to this Order by reference to an agency, unit, branch, division or other part of that authority, the reference in paragraph (3) to all more senior offices, ranks or positions with that authority is a reference to all more senior offices, ranks or positions with that agency, unit, branch, division or part.

Additional offices, ranks and positions prescribed for urgent cases

4.—(1) Subject to the restrictions in articles 5 to 7, the offices, ranks and positions listed in the entries in column (3) 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 Schedule) are prescribed for the purposes of section 30(1) of the Act in the circumstances specified in paragraph (2).

(2) An individual holding an office, rank or position which is listed in an entry in column (3) of the Schedule may only grant an authorisation (for the purposes of section 28 or 29 of the Act in the case of an entry in Part 1 of the Schedule or for the purposes of section 28 only in the case of an entry in Part 2) where it is not reasonably practicable, having regard to the urgency of the case, for the application for an authorisation to be considered by an individual with the same relevant public authority holding an office, rank or position which is listed in column (2) of the Schedule.

Restrictions on the granting of authorisations

5.—(1) An individual holding an office, rank or position which is listed in an entry in column (2) or (3) of the Schedule may not grant an authorisation unless that individual believes it is necessary for any of the grounds set out in paragraphs (a) to (f) of—

(a) section 28(3) or 29(3) of the Act in the case of an entry in Part 1 of the Schedule (subject to article 6(3)), or

(b) section 28(3) of the Act in the case of an entry in Part 2,

which is listed in the corresponding entry in column (4) of the Schedule.

(2) In column (4), a reference to a lettered paragraph is a reference to a paragraph identified by means of that letter in—

(a) section 28(3) or 29(3) of the Act in the case of an entry in Part 1 of the Schedule (subject to article 6(3)), or

(b) section 28(3) of the Act in the case of an entry in Part 2.

6.—(1) Where an entry in column (2) or (3) of Part 1 of the Schedule is headed by reference to an authorisation under section 28 or section 29, an authorisation may only be granted by the individual holding the office, rank or position listed in the entry under the section by which the entry is headed.

(2) Such a heading in column (2) or (3) of Part 1 of the Schedule refers to section 28 or section 29, as the case may be, of the Act.

(3) Where paragraph (1) applies, a reference to a paragraph in column (4) of Part 1 of the Schedule is to a paragraph in subsection (3) of the section specified in the heading.

7. An individual holding an office, rank or position with the Food Standards Agency may not grant an authorisation for conduct in Northern Ireland.

8. The restrictions on the granting of authorisations under sections 28 and 29 that apply to an individual holding an office, rank or position with a relevant public authority listed in column 2 of the Schedule to this Order shall also apply to individuals holding all more senior offices, ranks or positions with that authority that are prescribed by article 3(3).

Transitional arrangements

9. This Order does not affect the continued operation of the Orders mentioned in article 10 in relation to authorisations under section 28 or 29 of the Act granted before this Order comes into force.

Revocation

10. The following Orders are revoked to the extent indicated—

- (a) all of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003(a), except articles 1 to 3,
- (b) articles 4 and 5 of the Independent Police Complaints Commission (Investigatory Powers) Order 2004(b),
- (c) all of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2005(c), except articles 1 and 2(1),
- (d) all of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2006(d), except articles 1 and 2.

Home Office
Date

Name
Minister of State

(a) S.I. 2003/3171.
(b) S.I. 2004/815.
(c) S.I. 2005/1084.
(d) S.I. 2006/1874.

SCHEDULE

Articles 3, 4, 5 and 6

PRESCRIBED OFFICES ETC. IN RELEVANT PUBLIC AUTHORITIES AND RESTRICTIONS ON AUTHORISATIONS

PART 1

OFFICES ETC. AND RESTRICTIONS IN RESPECT OF PUBLIC AUTHORITIES SPECIFIED IN PART 1 OF SCHEDULE 1 TO THE ACT

<i>(1)</i> Relevant authorities	<i>(2)</i> public	<i>(2)</i> Prescribed offices etc.	<i>(3)</i> Urgent cases	<i>(4)</i> Grounds set out in paragraphs of section 28(3) or 29(3) of the Act
A police force maintained under section 2 of the Police Act 1996(a)		Superintendent	Inspector	Paragraphs (a), (b), (c), (d) and (e)
The metropolitan police force		Superintendent	Inspector	Paragraphs (a), (b), (c), (d) and (e)
<i>(1)</i> Relevant authorities	<i>(2)</i> public	<i>(2)</i> Prescribed offices etc.	<i>(3)</i> Urgent cases	<i>(4)</i> Grounds set out in paragraphs of section 28(3) or 29(3) of the Act
The City of London police force		Superintendent	Inspector	Paragraphs (a), (b), (c), (d) and (e)
A police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967(b)		Superintendent	Inspector	Paragraphs (a), (b), (c), (d) and (e)
The Police Service of Northern Ireland(c)		Superintendent	Inspector	Paragraphs (a), (b), (c), (d) and (e)
The Ministry of Defence Police		Superintendent	Inspector	Paragraphs (a), (b) and (c)
The Royal Navy Police		Commander	Lieutenant Commander	Paragraphs (a), (b) and (c)

(a) 1996 c.16.

(b) 1967 c.77.

(c) A police force within paragraph 1 of Schedule 1 to the Act, as defined by section 81(1) of the Act and amended by section 78(2)(f) of the Police (Northern Ireland) Act 2000 (c.32).

The Royal Military Police	Lieutenant Colonel	Major	Paragraphs (a), (b) and (c)
The Royal Air Force Police	Wing Commander	Squadron Leader	Paragraphs (a), (b) and (c)
The British Transport Police	Superintendent	Inspector	Paragraphs (a), (b), (c), (d) and (e)
The Civil Nuclear Constabulary	Superintendent	Inspector	Paragraphs (a) and (b)
The Serious Organised Crime Agency	Senior Manager (Grade 2)	Principal Officer (Grade 3)	Paragraph (b)
The Scottish Crime and Drug Enforcement Agency	Superintendent or Grade PO7	Inspector	Paragraph (b), (d) and (g)
The Serious Fraud Office	Grade 6	—	Paragraph (b)
The force comprising the constables appointed under article 3 of the Mersey Docks and Harbour (Police) Order 1975(a) on the nomination of the Mersey Docks and Harbour Company	Superintendent	Inspector	Paragraphs (b), (d) and (e)
The Security Service	General Duties 3 or any other Officer at Level 3	—	Paragraphs (a), (b) and (c)
<i>(1) Relevant public authorities</i>	<i>(2) Prescribed offices etc.</i>	<i>(3) Urgent cases</i>	<i>(4) Grounds set out in paragraphs of section 28(3) or 29(3) of the Act</i>
The Secret Intelligence Service	Grade 6 or equivalent	—	Paragraphs (a), (b) and (c)
The Government Communications Headquarters	GC8	—	Paragraphs (a), (b) and (c)
The Royal Navy	Commander	Lieutenant Commander	Paragraphs (a), (b), (c), (d) and (e)
The Army	Lieutenant Colonel	Major	Paragraphs (a), (b), (c), (d) and (e)
The Royal Air Force	Wing Commander	Squadron Leader	Paragraphs (a), (b), (c), (d) and (e)

(a) S.I. 1975/1224.

The Commissioners for Her Majesty's Revenue and Customs	Senior Officer	Higher Officer	Paragraphs (a), (b), (d), (e) and (f)
The Department for Environment, Food and Rural Affairs	Senior Investigation Officer in DEFRA Investigation Services	—	Paragraph (b)
	Senior Fish Health Inspector (PB6 or above) in Centre for Environment, Fisheries and Aquaculture Science	—	Paragraph (b)
	Section 28 authorisation District Inspector in Marine and Fisheries Agency	—	Paragraph (b)
	Section 29 authorisation Deputy Chief Inspector in Marine and Fisheries Agency	—	Paragraph (b)
The Department of Health	Grade 6 in Medicines and Healthcare Products Regulatory Agency	Grade 7 in Medicines and Healthcare Products Regulatory Agency	Paragraphs (b), (d) and (e)
The Home Office	Immigration Inspector or Senior Officer in the UK Border Agency	Chief Immigration Officer or Higher Officer in the UK Border Agency	Paragraphs (b) and (c)
	<i>(2)</i> Head of Security and Intelligence (Detention Services) in the UK Border Agency	—	Paragraphs (b) and (d)
<i>(1)</i> Relevant public authorities	<i>(2)</i> Prescribed offices etc. Section 28 authorisation The Head of the Unit responsible for anti-corruption in the UK Border Agency	<i>(3)</i> Urgent cases Section 28 authorisation Senior Executive Officer in the Unit responsible for anti-corruption in the UK Border Agency	<i>(4)</i> Grounds set out in paragraphs of section 28(3) or 29(3) of the Act Paragraph (b)

The Ministry of Justice	Operational Manager responsible for security and operations in a directly managed prison	Duty Governor in a directly managed prison	Paragraphs (b) and (d)
	Controller in a contracted out prison	Deputy Controller in a contracted out prison	Paragraphs (b) and (d)
The Northern Ireland Office	Deputy Principal or Governor 3 in the Northern Ireland Prison Service	Staff Officer or Governor 4 in the Northern Ireland Prison Service	Paragraphs (b) and (d)
The Department for Business, Innovation and Skills	Deputy Chief Investigation Officer in the Investigation Officers Branch	—	Paragraph (b)
The Department for Transport	Head of Enforcement in the Maritime and Coastguard Agency	Enforcement Officer in the Maritime and Coastguard Agency	Paragraphs (b) and (d)
	Section 28 authorisation Chief Executive of the Driving Standards Agency	—	Paragraphs (b) and (d)
	Section 28 authorisation Head of Intelligence, Head of Investigations or Regional Operations Manager in the Vehicle and Operator Services Agency	Section 28 authorisation Area Manager or Regional Intelligence Coordinator in the Vehicle and Operator Services Agency	Paragraphs (b) and (d)
	Section 29 authorisation	Section 29 authorisation	Paragraphs (b) and (d)
<i>(1)</i> Relevant authorities	<i>(2)</i> public Prescribed offices etc.	<i>(3)</i> Urgent cases	<i>(4)</i> Grounds set out in paragraphs of section 28(3) or 29(3) of the Act
The Welsh Assembly Government	Head of Intelligence, Head of Investigations or Regional Operations Manager in the Vehicle and Operator Services Agency Head of Department for Health and Social Services	Regional Intelligence Coordinator in the Vehicle and Operator Services Agency Member of Department for Health and Social Services at a level equivalent to Grade 7	Paragraphs (b), (d) and (e)

	Head of Department for Health and Social Services Finance	Member of Department for Health and Social Services Finance at a level equivalent to Grade 7	Paragraphs (b), (d) and (e)
	Head of Fisheries Unit	—	Paragraph (b)
	Head of Rural Payments Division	Member of Rural Payments Division at a level equivalent to Grade 7	Paragraphs (b) and (e)
	Regional Director or equivalent grade in the Care and Social Services Inspectorate for Wales	Regulation Manager or equivalent grade in the Care and Social Services Inspectorate for Wales	Paragraphs (b), (d) and (e)
Any county council or district council in England, a London borough council, the Common Council of the City of London in its capacity as a local authority, the Council of the Isles of Scilly, and any county council or county borough council in Wales	Director, Head of Service, Service Manager or equivalent	—	Paragraph (b)
A fire and rescue authority under the Fire and Rescue Services Act 2004	Group Manager	—	Paragraphs (b) and (d)
The Charity Commission	Senior Investigations Manager	Investigations Manager	Paragraph (b)
The Environment Agency	Section 28 authorisation Area Management Team member	Section 28 authorisation Area Team Leader	Paragraphs (b), (d) and (e)
<i>(1)</i> <i>Relevant public authorities</i>	<i>(2)</i> <i>Prescribed offices etc.</i>	<i>(3)</i> <i>Urgent cases</i>	<i>(4)</i> <i>Grounds set out in paragraphs of section 28(3) or 29(3) of the Act</i>
	Section 29 authorisation Area Manager	Section 29 authorisation National Enforcement Service Manager	Paragraphs (b), (d) and (e)
The Financial Services Authority	Head of Department in Enforcement Division	Manager in Enforcement Division	Paragraph (b)

The Food Standards Agency	Section 28 authorisation Head of Division or equivalent grade	—	Paragraphs (b) and (e)
	Section 29 authorisation Deputy Director of Legal Services or any Director	—	Paragraphs (b) and (e)
The Gambling Commission	Head of Department	—	Paragraph (b)
The Office of Fair Trading	Any member of the Senior Civil Service with responsibility for cartels or criminal enforcement	Grade 7 in the Cartels and Criminal Enforcement Group	Paragraphs (b) and (c)
The Independent Police Complaints Commission	Chairman, Deputy Chairman or Director	Senior Investigating Officer	Paragraph (b)
The Office of the Police Ombudsman for Northern Ireland	Senior Investigating Officer	Deputy Senior Investigating Officer	Paragraph (b)
The Gangmasters Licensing Authority	Head of Operations	—	Paragraph (b)
The Care Quality Commission	Head of Operations in a region	Area Manager	Paragraphs (b) and (e)
The Health and Safety Executive	Band 2 Inspector	—	Paragraphs (b), (d) and (e)
The Office of Communications	Section 28 authorisation Principal responsible for spectrum investigation and enforcement	Section 28 authorisation Senior Associate responsible for spectrum investigation and enforcement	Paragraph (b)
	Section 29 authorisation	—	Paragraph (b)
<i>(1)</i> <i>Relevant public authorities</i>	<i>(2)</i> <i>Prescribed offices etc.</i>	<i>(3)</i> <i>Urgent cases</i>	<i>(4)</i> <i>Grounds set out in paragraphs of section 28(3) or 29(3) of the Act</i>
	Senior Management Group member responsible for spectrum investigation and enforcement		

PART 2

OFFICES, ETC. AND RESTRICTIONS IN RESPECT OF RELEVANT PUBLIC AUTHORITIES SPECIFIED IN PART 2 OF SCHEDULE 1 TO THE ACT

<i>(1)</i> <i>Relevant public authorities</i>	<i>(2)</i> <i>Prescribed offices etc.</i>	<i>(3)</i> <i>Urgent cases</i>	<i>(4)</i> <i>Grounds set out in paragraphs of section 28(3) of the Act</i>
A Special Health Authority established under section 28 of the National Health Service Act 2006(a) or section 22 of the National Health Service (Wales) Act 2006(b)	Senior Manager (not below the grade of Agenda for Change pay band 8b) in the Counter Fraud and Security Management Services Division of the NHS Business Services Authority	—	Paragraph (b)
Her Majesty's Chief Inspector of Education, Children's Services and Skills	Divisional Manager (Early Years Foundation Stage Frameworks), Divisional Manager (Social Care) or Director (Education and Care)	—	Paragraph (b)
The Information Commissioner	Head of Enforcement	Senior Investigating Officer	Paragraph (b)
The Royal Pharmaceutical Society of Great Britain	Director (Grade 7)	—	Paragraphs (b), (d) and (e)
The Child Maintenance and Enforcement Commission	Senior Executive Officer or equivalent grade	Higher Executive Officer or equivalent grade	Paragraph (b)
<i>(1)</i> <i>Relevant public authorities</i>	<i>(2)</i> <i>Prescribed offices etc.</i>	<i>(3)</i> <i>Urgent cases</i>	<i>(4)</i> <i>Grounds set out in paragraphs of section 28(3) of the Act</i>
The force comprising the special constables	Superintendent	Inspector	Paragraphs (b), (d) and (e)

(a) 2006 c.41.

(b) 2006 c.42.

appointed under section 79 of the Harbours, Docks and Piers Clauses Act 1847(a) on the nomination of the Dover Harbour Board			
The Department for Work and Pensions	Senior Executive Officer or equivalent grade in Jobcentre Plus	Higher Executive Officer or equivalent grade in Jobcentre Plus	Paragraph (b)
	Senior Executive Officer or equivalent grade in Department for Work and Pensions Risk Assurance Division	—	Paragraph (b)
The Postal Services Commission	Principal, Legal	Deputy Director	Paragraph (b)
A universal service provider (within the meaning of the Postal Services Act 2000(b)) acting in connection with the provision of a universal postal service (within the meaning of that Act)	Senior Investigation Manager in Royal Mail Group Ltd	—	Paragraph (b)

(a) 1847 c.27 (10 & 11 Vict.)

(b) 2000 c.26.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order consolidates the Orders revoked, or partially revoked, by article 10 of this Order.

Under section 30(1) of the Regulation of Investigatory Powers Act 2000 (“the Act”), the persons designated for the purposes of sections 28 and 29 of that Act are the individuals holding such offices, rank and positions with relevant public authorities as are prescribed for the purposes of section 30(1) by order made by the Secretary of State. Under section 28(1), the persons designated for the purposes of that section have power to grant authorisations for the carrying out of directed surveillance (as defined by section 26(2)). Under section 29(1), the persons designated for the purposes of that section have power to grant authorisations for the conduct or the use of a covert human surveillance source (as defined by section 26(7) and (8)). Under section 30(4), a public authority must be specified in Part 1 of Schedule 1 to the Act in order to be a relevant public authority in relation to section 29. A public authority which is specified in either Part 1 or Part 2 of that Schedule is a relevant public authority for the purposes of section 28.

Article 3 and the Schedule to this Order prescribe the offices, positions and ranks in column (2) of the Schedule for these purposes. Article 4 and the Schedule to this Order prescribe the offices, positions and ranks in column (3) for the granting of authorisations in urgent cases. Articles 5 to 7 set out restrictions on the circumstances in which authorisations can be granted.

The main substantive changes to the content of the Orders revoked by this Order are made by article 2 which amends Schedule 1 to the Act to:

- replace a reference which is now spent (by substituting “any fire and rescue authority under the Fire and Rescue Services Act 2004” for “any fire authority within the meaning of the Fire Services Act 1947 (read with paragraph 2 of Schedule 11 to the Local Government Act 1985)”);
- move four public authorities from Part 1 to Part 2 (the force comprising the special constables nominated by the Dover Harbour Board, the Department for Work and Pensions, the Postal Services Commission and a universal service provider (within the meaning of the Postal Services Act 2000) acting in connection with the provision of a universal postal service (within the meaning of that Act));
- move one authority from Part 2 to Part 1 (the Health and Safety Executive);
- remove one public authority from the Schedule (the Ministry of Defence); and
- add one new public authority to the list of relevant public authorities in Part 2 (the Child Maintenance and Enforcement Commission).

Consequential amendments are made to the Schedule to this Order. In addition, no entry is included in respect of the Royal Parks Constabulary consequent on the coming into force of the repeal of the entry in respect of that Constabulary in Part 2 of Schedule 1 to the Act.

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DRAFT STATUTORY INSTRUMENTS

2010 No.

INVESTIGATORY POWERS

**The Regulation of Investigatory Powers (Directed Surveillance
and Covert Human Intelligence Sources) Order 2010**

£5.50