Draft Order laid before Parliament under section 22(9) and 25(5) of the Regulation of Investigatory Powers Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

INVESTIGATORY POWERS

The Regulation of Investigatory Powers (Communications Data) 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 22(2)(h), 25(2) and (3) and 78(5) of the Regulation of Investigatory Powers Act 2000(**1**), together with paragraph (g) of the definition of "relevant public authority" in section 25(1) of that Act.

In accordance with sections 22(9) and 25(5) 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 (Communications Data) 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;

"authorisation" means an authorisation under section 22(3) of that Act; and

"notice" means a notice under section 22(4) of that Act.

Additional purposes of section 22(2) of the Act

2. The following additional purposes are specified for the purposes of section 22(2) of the Act (to the extent that they do not fall within paragraphs (a) to (g) of that provision)—

(a) to assist investigations into alleged miscarriages of justice;

(b) where a person ("P") has died or is unable to identify themselves because of a physical or mental condition—

(**1**) 2000 c.23; section 25 has been amended by paragraph 135 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c.15).

(i) to assist in identifying P, or

(ii) to obtain information about the P's next of kin or other persons connected with P or about the reason for P's death or condition.

Schedules 1 and 2 and additional relevant public authorities

3.—(1) Schedule 1 (which prescribes offices, ranks or positions in the relevant public authorities listed in the definition of "relevant public authority" in section 25(1) of the Act(**2**)) has effect.

(2) Schedule 2 (which specifies additional public authorities as relevant public authorities and prescribes offices, ranks and positions in those authorities) has effect.

(3) Each of the public authorities set out in column (1) of Schedule 2 is specified for the purposes of section 25(1) of the Act as a relevant public authority.

(4) A reference to section 21, 22 or 25 in the heading to a column in Schedule 1 or 2 is a reference, as the case may be, to section 21, 22 or 25 of the Act.

Prescribed offices, ranks and positions with relevant public authorities

4.—(1) Subject to the restrictions in articles 5 and 6, the offices, ranks and positions listed in entries to columns (2) and (3) of Schedules 1 and 2 (being offices, ranks and positions with the relevant public authorities listed in relation to such entries in column (1) of Schedules 1 and 2) are prescribed for the purposes of section 25(2) of the Act.

(2) Where an office, rank or position with a relevant public authority listed in column 2 of Schedule 1 or column 2 of Schedule 2 is prescribed by virtue of article 4(1), all more senior offices, ranks or positions with that authority are also prescribed for the purposes of section 25(2), subject to article 7.

(3) Where an office, rank or position with a relevant public authority is described in column 2 of Schedule 1 or column 2 of Schedule 2 by reference to an agency, unit, branch, division or other part of that authority, the reference in paragraph (2) 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.

Restrictions on the granting of authorisations or the giving of notices

5.—(1) An individual holding an office, rank or position which is listed in column (2) or (3) of Schedule 1 or 2 may not grant an authorisation or give a notice unless that individual believes it is necessary for any purpose within section 22(2) of the Act (as extended by article 2) which is listed in the corresponding entry in column (4) of those Schedules.

(2) In column (4) of Schedules 1 and 2, a reference to section 22 is a reference to that section in the Act.

6.—(1) — The only authorisation that may be granted and the only notice that may be given by an individual falling within any of paragraphs (2) to (7) below is restricted as set out in the paragraph in question.

(2) Subject to paragraph (3), in the case of an individual—

(a) holding an office, rank or position which is listed in column (2) of Schedule 1 or of Part 1 of Schedule 2, and

(**2**) That definition has been amended by section 50(1) and (7) of the Commissioners for Revenue and Customs Act 2005 (c.11) and Schedule 4 to the Serious Organised Crime and Police Act 2005 (c.15).

(b) who believes that the authorisation or notice is necessary on grounds other than those set out in section 22(2)(a), (b), (c) or (g) of the Act or article 2,

the authorisation or notice may only be in respect of communications data that falls within section 21(4)(c) of the Act.

(3) The restriction in paragraph (2) shall not apply in the case of an individual holding an office, rank or position with the Air Accident Investigation Branch, the Marine Accident Investigation Branch or the Rail Accident Investigation Branch.

(4) In the case of an individual holding an office, rank or position which is listed in column (2) of Part 2 of Schedule 2, the authorisation or notice may be only in respect of communications data that falls within—

(a) section 21(4)(c) of the Act where the individual believes that it is necessary on grounds other than those set out in section 22(2)(a), (b), (c) or (g) of the Act or article 2, or

(b) in any other case, section 21(4)(b) or (c) of the Act.

(5) In the case of an individual—

(a) holding an office, rank or position which is listed in column (2) of Part 3 of Schedule 2, and

(b) who believes that the authorisation or notice is necessary on grounds other than those set out in section 22(2)(a), (b), (c) or (g) of the Act or article 2,

the authorisation or notice may only be in respect of communications data which relates to a postal service and falls within section 21(4)(c) of the Act.

(6) In the case of an individual—

(a) holding an office, rank or position which is listed in column (2) of Part 3 of Schedule 2, and

(b) who believes that the authorisation or notice is necessary on the grounds set out in section 22(2)(a), (b),(c) or (g) of the Act or article 2,

the authorisation or notice may only be in respect of communications data which relates to a postal service.

(7) In the case of an individual holding an office, rank or position which is listed in column (3) of Schedule 1 or 2, the authorisation or notice may be only in respect of communications data that falls within section 21(4)(c) of the Act.

7. The restrictions on the granting of authorisations and the giving of notices that apply to an individual holding an office, rank or position with a relevant public authority listed in column 2 of Schedule 1 or column 2 of Schedule 2 shall also apply to all individuals holding all more senior offices, ranks or positions with that authority that are prescribed by article 4(2).

Transitional arrangements

8. This Order does not affect the continued operation of the Orders mentioned in article 9 in relation to authorisations granted or notices given before this Order comes into force.

Revocations

9. The following Orders are revoked—

(a) the Regulation of Investigatory Powers (Communications Data) Order 2003(**3**),

(b) the Regulation of Investigatory Powers (Communications Data) (Amendment) Order 2005(**4**), and

(**3**) S.I. 2003/3172.
(**4**) S.I. 2005/1083.

(c) the Regulation of Investigatory Powers (Communications Data) (Additional Functions and Amendment) Order 2006(**5**).

Home Office
Date

Name
Minister of State

(**5**) S.I. 2006/1878.

SCHEDULE 1

Articles 3, 4, 5 and 6

OFFICES, RANKS AND POSITIONS IN RELEVANT PUBLIC AUTHORITIES LISTED IN SECTION 25(1)

(1)	*(2)* *Prescribed offices (etc.): generally all communications data*	*(3)* *Additional prescribed offices (etc.): section 21(4)(c) communications data only*	*(4)* *Purposes listed in section 22(2) or article 2*
Police forces			
A police force maintained under section 2 of the Police Act 1996(**6**)	Superintendent	Inspector	Section 22(2)(a), (b), (c), (d), (e) and (g) Article 2(b)
The metropolitan police force	Superintendent	Inspector	Section 22(2)(a), (b), (c), (d), (e) and (g) Article 2(b)
The City of London police force	Superintendent	Inspector	Section 22(2)(a), (b), (c), (d), (e) and (g) Article 2(b)
A police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967(**7**)	Superintendent	Inspector	Section 22(2)(a), (b), (c), (d), (e) and (g) Article 2(b)
The Police Service of Northern Ireland(**8**)	Superintendent	Inspector	Section 22(2)(a), (b), (c), (d), (e) and (g) Article 2(b)
The Ministry of Defence Police	Superintendent	Inspector	Section 22(2)(a), (b), (c) and (g)
The Royal Navy Police	Commander	Lieutenant Commander	Section 22(2)(a), (b), (c) and (g)
The Royal Military Police	Lieutenant Colonel	Major	Section 22(2)(a), (b), (c) and (g)
The Royal Air Force Police	Wing Commander	Squadron Leader	Section 22(2)(a), (b), (c) and (g)
The British Transport Police	Superintendent	Inspector	Section 22(2)(a), (b), (c), (d), (e) and (g)

(**6**) 1996 c.16.
(**7**) 1967 c.77.
(**8**) The expression "police force" in the definition of "relevant public authority" in section 25(1) of the Act is defined by section 81(1) of the Act, as amended by section 78(2) of the Police (Northern Ireland) Act 2000 (c.32).