

2006 No. 2190

TRANSPORT

**The Transport Security (Electronic Communications)
Order 2006**

<i>Made</i>	- - - -	<i>8th August 2006</i>
<i>Laid before Parliament</i>		<i>14th August 2006</i>
<i>Coming into force</i>	- -	<i>30th September 2006</i>

The Secretary of State for Transport makes the following Order in exercise of the powers conferred by sections 8 and 9 of the Electronic Communications Act 2000(a).

In accordance with section 8 of that Act he considers that the authorisation of the use of electronic communications by this Order for any purpose is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Transport Security (Electronic Communications) Order 2006 and shall come into force on 30th September 2006.

(2) In this Order—

“the 1982 Act” means the Aviation Security Act 1982(b);

“the 1990 Act” means the Aviation and Maritime Security Act 1990(c);

“the 1993 Act” means the Railways Act 1993(d);

“the 1994 Order” means the Channel Tunnel (Security) Order 1994(e); and

“the 2004 Regulations” means the Ship and Port Facility (Security) Regulations 2004(f).

Use of electronic communications for service of notices under Part 2 of the 1982 Act

2.—(1) Section 24 of the 1982 Act (service of documents) is amended as follows.

(2) In subsection (2), after paragraph (d) insert—

“or

(e) where—

(a) 2000 c.7. The definition of “electronic communication” in section 15(1) of that Act was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(b) 1982 c.36.

(c) 1990 c.31.

(d) 1993 c.43.

(e) S.I. 1994/570.

(f) S.I. 2004/1495.

- (i) an address for service using electronic communications has been given by that person and not withdrawn in accordance with subsection (2E), and
 - (ii) that person has agreed to accept service by electronic communications of documents in a certain form and has not withdrawn that agreement in accordance with that subsection,
- by using electronic communications to send the document in that form to that person at that address.”.

(3) After subsection (2) insert—

“(2A) A document given to or served on a person in accordance with subsection (2)(e) must be in a form sufficiently permanent to be used for subsequent reference.

(2B) Where a document is given to or served on a person in accordance with subsection (2)(e), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person’s normal business hours, in which case it is to be taken to have been given or served on the next working day, and in this subsection, “working day” means any day other than—

- (a) a Saturday or a Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

(2C) A document authorised or required to be given to or served on a person by the Secretary of State or an authorised person is also to be treated as given or served where—

- (a) that person and the Secretary of State or (as the case may be) the authorised person have agreed to his having access to documents of a particular description and in a certain form on a web site (instead of their being given to or served on him in any other way specified in subsection (2));
- (b) that person has not withdrawn his agreement in accordance with subsection (2F);
- (c) the document in question is a document to which the agreement applies;
- (d) the Secretary of State or the authorised person has given that person a notice, in a manner agreed between them for the purpose—
 - (i) stating that the document has been published on a web site maintained by or on behalf of the Secretary of State;
 - (ii) setting out the address of that web site; and
 - (iii) setting out the place on that web site where the document may be accessed and how it may be accessed by that person; and
- (e) the published document is in a form sufficiently permanent to be used for subsequent reference.

(2D) Where a document is given to or served on a person in accordance with subsection (2C), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under subsection (2C)(d) is given.

(2E) A person who has supplied another person with an address for service using electronic communications and has agreed to accept service of documents in a certain form in accordance with subsection (2)(e) may give notice withdrawing that address or that agreement or both.

(2F) A person who has an agreement with the Secretary of State or an authorised person under subsection (2C)(a) may give notice withdrawing that agreement.

(2G) A withdrawal under subsection (2E) or (2F) shall take effect on the later of—

- (a) the date specified by the person in the notice; and
- (b) the date which is fourteen days after the date on which the notice is given.

(2H) A notice under subsection (2E) or (2F) must be given to the person to whom the address was supplied or with whom the agreement was made.

(2I) Oral notice is not sufficient for the purposes of subsections (2E) or (2F).”.

(4) For subsection (3) substitute—

“(3) Any document authorised to be given to or served on a body corporate may be given to or served on the secretary, clerk or similar officer of that body.”.

Insertion of definitions into Part 2 of the 1982 Act

3.—(1) Section 24A of the 1982 Act (interpretation of Part 2) is amended as follows.

(2) In subsection (1), insert the following definitions at the appropriate places—

““address”, in relation to electronic communications, means any number or address used for the purposes of such communications,”;

““electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7),”.

Use of electronic communications for service of notices under Part 3 of the 1990 Act

4.—(1) Section 45 of the 1990 Act (service of documents) is amended as follows.

(2) In subsection (2), after paragraph (d) insert—

“or

(e) where—

(i) an address for service using electronic communications has been given by that person and not withdrawn in accordance with subsection (2E), and

(ii) that person has agreed to accept service by electronic communications of documents in a certain form and has not withdrawn that agreement in accordance with that subsection,

by using electronic communications to send the document in that form to that person at that address.”.

(3) After subsection (2) insert—

“(2A) A document given to or served on a person in accordance with subsection (2)(e) must be in a form sufficiently permanent to be used for subsequent reference.

(2B) Where a document is given to or served on a person in accordance with subsection (2)(e), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person’s normal business hours, in which case it is to be taken to have been given or served on the next working day, and in this subsection, “working day” means any day other than—

(a) a Saturday or a Sunday;

(b) Christmas Day or Good Friday; or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

(2C) A document authorised or required to be given to or served on a person by the Secretary of State or an authorised person is also to be treated as given or served where—

(a) that person and the Secretary of State or (as the case may be) the authorised person have agreed to his having access to documents of a particular description and in a certain form on a web site (instead of their being given to or served on him in any other way specified in subsection (2));

(b) that person has not withdrawn his agreement in accordance with subsection (2F);

(c) the document in question is a document to which the agreement applies;

- (d) the Secretary of State or the authorised person has given that person a notice, in a manner agreed between them for the purpose—
 - (i) stating that the document has been published on a web site maintained by or on behalf of the Secretary of State;
 - (ii) setting out the address of that web site; and
 - (iii) setting out the place on that web site where the document may be accessed and how it may be accessed by that person; and
- (e) the published document is in a form sufficiently permanent to be used for subsequent reference.

(2D) Where a document is given to or served on a person in accordance with subsection (2C), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under subsection (2C)(d) is given.

(2E) A person who has supplied another person with an address for service using electronic communications and has agreed to accept service of documents in a certain form in accordance with subsection (2)(e) may give notice withdrawing that address or that agreement or both.

(2F) A person who has an agreement with the Secretary of State or an authorised person under subsection (2C)(a) may give notice withdrawing that agreement.

(2G) A withdrawal under subsection (2E) or (2F) shall take effect on the later of—

- (a) the date specified by the person in the notice; and
- (b) the date which is fourteen days after the date on which the notice is given.

(2H) A notice under subsection (2E) or (2F) must be given to the person to whom the address was supplied or with whom the agreement was made.

(2I) Oral notice is not sufficient for the purposes of subsection (2E) or (2F)."

(4) For subsection (3) substitute—

"(3) Any document authorised to be given to or served on a body corporate may be given to or served on the secretary, clerk or similar officer of that body."

Insertion of definitions into Part 3 of the 1990 Act

5.—(1) Section 46 of the 1990 Act (interpretation of Part 3) is amended as follows.

(2) In subsection (1), insert the following definitions at the appropriate places—

““address”, in relation to electronic communications, means any number or address used for the purposes of such communications,”;

““electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7).”.

Use of electronic communications for service of certain notices under the 1993 Act

6. After section 149 of the 1993 Act (service of documents), insert—

“149A. Service of documents under sections 118 to 120: additional provisions

(1) Any document required or authorised by virtue of sections 118 to 120 or this section of this Act to be given or served by the Secretary of State to or on any person may also be given or served, where—

- (a) an address for service using electronic communications has been given by that person and not withdrawn in accordance with subsection (6), and
- (b) that person has agreed to accept service by electronic communications of documents in a certain form and has not withdrawn that agreement in accordance with that subsection,

by using electronic communications to send the document in that form to that person at that address.

(2) A document given to or served on a person in accordance with subsection (1) must be in a form sufficiently permanent to be used for subsequent reference.

(3) Where a document is given to or served on a person in accordance with subsection (1), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person's normal business hours, in which case it is to be taken to have been given or served on the next working day, and in this subsection, "working day" means any day other than—

- (a) a Saturday or a Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

(4) A document required or authorised by virtue of sections 118 to 120 of this Act to be given or served by the Secretary of State is also to be treated as given or served where—

- (a) that person and the Secretary of State have agreed to his having access to documents of a particular description and in a certain form on a web site (instead of their being given to or served on him in any other way specified in this section or section 149);
- (b) that person has not withdrawn his agreement in accordance with subsection (7);
- (c) the document in question is a document to which the agreement applies;
- (d) the Secretary of State has given that person a notice, in a manner agreed between them for the purpose—
 - (i) stating that the document has been published on a web site maintained by or on behalf of the Secretary of State;
 - (ii) setting out the address of that web site; and
 - (iii) setting out the place on that web site where the document may be accessed and how it may be accessed by that person; and
- (e) the published document is in a form sufficiently permanent to be used for subsequent reference.

(5) Where a document is given to or served on a person in accordance with subsection (4), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under subsection (4)(d) is given.

(6) A person who has supplied the Secretary of State with an address for service using electronic communications and has agreed to accept service of documents in a certain form in accordance with subsection (1) may give notice to the Secretary of State withdrawing that address or that agreement or both.

(7) A person who has an agreement with the Secretary of State under subsection (4)(a) may give notice to the Secretary of State withdrawing that agreement.

(8) A withdrawal under subsection (6) or (7) shall take effect on the later of—

- (a) the date specified by the person in the notice; and
- (b) the date which is fourteen days after the date on which the notice is given.

(9) Oral notice is not sufficient for the purposes of subsection (6) or (7).

(10) This section shall not apply to any document in relation to the service of which provision is made by the rules of the court.

(11) In this section—

“address”, in relation to electronic communications, means any number or address used for the purposes of such communications;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7).”.

Insertion of definitions into the 1994 Order

7.—(1) Article 2 of the 1994 Order (interpretation) is amended as follows.

(2) In paragraph (1) insert the following definitions at the appropriate places—

““address”, in relation to electronic communications, means any number or address used for the purposes of such communications,”;

““electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7).”.

Use of electronic communications for service of notices under Part 3 of the 1994 Order

8.—(1) Article 36 of the 1994 Order (service of documents) is amended as follows.

(2) In paragraph (2), after subparagraph (d) insert—

“or

(e) where—

(i) an address for service using electronic communications has been given by that person and not withdrawn in accordance with paragraph (2E), and

(ii) that person has agreed to accept service by electronic communications of documents in a certain form and has not withdrawn that agreement in accordance with that paragraph,

by using electronic communications to send the document in that form to that person at that address.”.

(3) After paragraph (2) insert—

“(2A) A document given to or served on a person in accordance with paragraph (2)(e) must be in a form sufficiently permanent to be used for subsequent reference.

(2B) Where a document is given to or served on a person in accordance with paragraph (2)(e), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person’s normal business hours, in which case it shall be taken to have been given or served on the next working day, and in this subsection, “working day” means any day other than—

(a) a Saturday or a Sunday;

(b) Christmas Day or Good Friday; or

(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

(2C) A document authorised or required to be given to or served on a person by the Secretary of State or an authorised person is also to be treated as given or served where—

(a) that person and the Secretary of State or (as the case may be) the authorised person have agreed to his having access to documents of a particular description and in a certain form on a web site (instead of their being given to or served on him in any other way specified in paragraph (2));

(b) that person has not withdrawn his agreement in accordance with paragraph (2F);

(c) the document in question is a document to which the agreement applies;

(d) the Secretary of State or the authorised person has given that person a notice, in a manner agreed between them for the purpose—

- (i) stating that the document has been published on a web site maintained by or on behalf of the Secretary of State;
- (ii) setting out the address of that web site; and
- (iii) setting out the place on that web site where the document may be accessed and how it may be accessed by that person; and
- (e) the published document is in a form sufficiently permanent to be used for subsequent reference.

(2D) Where a document is given to or served on a person in accordance with paragraph (2C), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under paragraph (2C)(d) is given.

(2E) A person who has supplied another person with an address for service using electronic communications and has agreed to accept service of documents in a certain form in accordance with paragraph (2)(e) may give notice withdrawing that address or that agreement or both.

(2F) A person who has an agreement with the Secretary of State or an authorised person under paragraph (2C)(a) may give notice withdrawing that agreement.

(2G) A withdrawal under paragraph (2E) or (2F) shall take effect on the later of—

- (a) the date specified by the person in the notice; and
- (b) the date which is fourteen days after the date on which the notice is given.

(2H) A notice under paragraph (2E) or (2F) must be given to the person to whom the address was supplied or with whom the agreement was made.

(2I) Oral notice is not sufficient for the purposes of paragraph (2E) or (2F)."

(4) For paragraph (3) substitute—

"(3) Any document authorised to be given to or served on a body corporate may be given to or served on the secretary, clerk or similar officer of that body."

Insertion of definitions and interpretation into the 2004 Regulations

9.—(1) Regulation 2 of the 2004 Regulations (interpretation) is amended as follows.

(2) In paragraph (1) insert the following definitions at the appropriate places—

““address”, in relation to electronic communications, means any number or address used for the purposes of such communications;”;

““electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7);”.

Use of electronic communications for service of notices under the 2004 Regulations

10.—(1) Regulation 20 of the 2004 Regulations (service of documents) is amended as follows.

(2) In paragraph (2), for paragraph (e) substitute—

“(e) where—

- (i) an address for service using electronic communications has been given by that person and not withdrawn in accordance with paragraph (2E), and
- (ii) that person has agreed to accept service by electronic communications of documents in a certain form and has not withdrawn that agreement in accordance with that paragraph,

by using electronic communications to send the document in that form to that person at that address.”.

(3) After paragraph (2) insert—

“(2A) A document given to or served on a person in accordance with paragraph (2)(e) must be in a form sufficiently permanent to be used for subsequent reference.

(2B) Where a document is given to or served on a person in accordance with paragraph (2)(e), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the time at which the electronic communication is transmitted except where transmission is made outside that person’s normal business hours, in which case it shall be taken to have been given or served on the next working day, and in this subsection, “working day” means any day other than—

- (a) a Saturday or a Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.

(2C) A document authorised or required to be given to or served on a person by the Secretary of State or an authorised person is also to be treated as given or served where—

- (a) that person and the Secretary of State or (as the case may be) the authorised person have agreed to his having access to documents of a particular description and in a certain form on a web site (instead of their being given to or served on him in any other way specified in paragraph (2));
- (b) that person has not withdrawn his agreement in accordance with paragraph (2F);
- (c) the document in question is a document to which the agreement applies;
- (d) the Secretary of State or the authorised person has given that person a notice, in a manner agreed between them for the purpose—
 - (i) stating that the document has been published on a web site maintained by or on behalf of the Secretary of State;
 - (ii) setting out the address of that web site; and
 - (iii) setting out the place on that web site where the document may be accessed and how it may be accessed by that person; and
- (e) the published document is in a form sufficiently permanent to be used for subsequent reference.

(2D) Where a document is given to or served on a person in accordance with paragraph (2C), the document is, unless the contrary is proved, to be deemed to have been given to or served on that person at the same time as the notice required to be given under paragraph (2C)(d) is given.

(2E) A person who has supplied another person with an address for service using electronic communications and has agreed to accept service of documents in a certain form in accordance with paragraph (2)(e) may give notice withdrawing that address or that agreement or both.

(2F) A person who has an agreement with the Secretary of State or an authorised person under paragraph (2C)(a) may give notice withdrawing that agreement.

(2G) A withdrawal under paragraph (2E) or (2F) shall take effect on the later of—

- (a) the date specified by the person in the notice; and
- (b) the date which is fourteen days after the date on which the notice is given.

(2H) A notice under paragraph (2E) or (2F) must be given to the person to whom the address was supplied or with whom the agreement was made.

(2I) Oral notice is not sufficient for the purposes of paragraph (2E) or (2F).”.

(4) For paragraph (3) substitute—

“(3) Any document authorised to be given to or served on a body corporate may be given to or served on the secretary, clerk or similar officer of that body.”.

Extent

11. An amendment made by this Order has the same extent as the enactment amended.

Signed by authority of the Secretary of State

8th August 2006

S.J. Ladyman
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 8 and 9 of the Electronic Communications Act 2000, which enable Ministers to modify any enactment for the purpose of authorising or facilitating the use of electronic communications.

This Order modifies the following legislation relating to transport security: the Aviation Security Act 1982; the Aviation and Maritime Security Act 1990; the Railways Act 1993; the Channel Tunnel (Security) Order 1994; and the Ship and Port Facility (Security) Regulations 2004 (together “the principal legislation”).

Articles 2(2), 4(2), 6, 8(2) and 10(2) amend the principal legislation to provide in each case that documents may be served using electronic communications, for example by email, where the intended recipient has provided in advance an electronic address for service, and the document is served on that person at that address in a form agreed by the recipient. The amendments to the provisions of the Railways Act 1993 relate only to documents served by the Secretary of State under sections 118 to 120 of that Act.

Articles 2(3), 4(3), 6, 8(3) and 10(3) provide that, for service to be effective, the document must be in a sufficiently permanent form that it can be used for subsequent reference. They also provide that, unless the contrary is proved, service is deemed to have been effected at the time that the electronic communication is transmitted, except where an electronic communication is received outside a person’s normal business hours, when it shall be treated as having been received on the next working day. The recipient may withdraw his permission to accept service electronically by giving not less than 14 days written notice.

Articles 2(3), 4(3), 6, 8(3) and 10(3) also amend the principal legislation to provide that documents will also be treated as served where the intended recipient has agreed in advance that he will have access to such documents on a website maintained by the Secretary of State, and the Secretary of State notifies him, in a manner agreed in advance, of the publication on the website of the document being served and how to access it. Again, the amendments to the provisions of the Railways Act 1993 relate only to documents served by the Secretary of State under sections 118 to 120 of that Act. Any person who has agreed to such a method of service may withdraw his permission by giving not less than 14 days written notice.

Articles 3, 5, 6, 7, and 9 amend interpretation provisions in the principal legislation to provide for new definitions of “address” and “electronic communications”.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business is available from Department for Transport, Transec, Southside, 105 Victoria Street, London SW1E 6DT, and at www.opsi.gov.uk.

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TRANSPORT

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