
STATUTORY INSTRUMENTS

2021 No. 601

INVESTIGATORY POWERS

The Regulation of Investigatory Powers (Criminal Conduct Authorisations) (Amendment) Order 2021

<i>Made</i>	- - - -	<i>19th May 2021</i>
<i>Laid before Parliament</i>		<i>25th May 2021</i>
<i>Coming into force</i>	- -	<i>10th August 2021</i>

The Secretary of State, in exercise of the powers conferred by sections 29B(4)(c) and (10)(b), 30(1), (3), and (6) and 78(5) of the Regulation of Investigatory Powers Act 2000⁽¹⁾, makes the following Order.

Citation, commencement and extent

1.—(1) This Order may be cited as the Regulation of Investigatory Powers (Criminal Conduct Authorisations) (Amendment) Order 2021.

(2) This Order comes into force on 10th August 2021.

(3) This Order extends to England and Wales, Scotland and Northern Ireland.

Amendments to the Regulation of Investigatory Powers (Source Records) Regulations 2000

2. In regulation 3 of the Investigatory Powers (Source Records) Regulations 2000⁽²⁾ (particulars to be contained in records) —

(a) at the end of paragraph (m), omit “and”;

(b) at the end of paragraph (n), insert “and”;

(c) after paragraph (n), insert—

“(o) in the case of a source in relation to whom a criminal conduct authorisation has been granted under section 29B of the 2000 Act—

(i) any criminal conduct authorisations granted to the source, including any parameters of the conduct authorised;

⁽¹⁾ 2000 c. 23. Section 29B was inserted by section 1 of the Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (c. 4). Section 30 was amended by section 4 of the Covert Human Intelligence Sources (Criminal Conduct) Act 2021.

⁽²⁾ S.I. 2000/2725.

- (ii) confirmation from the person granting or renewing the authorisation that the authorisation and parameters of the authorisation have been explained to, and understood by, the source;
- (iii) the authorisation under section 29 of the 2000 Act to which the criminal conduct authorisation relates.”.

Amendments to the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010

3. The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010(3) is amended as follows—

- (a) in article 3 (matters subject to legal privilege), after “section 29”, in both places it occurs, insert “or section 29B”;
- (b) in article 4 (approving officer), after “section 29” insert “or section 29B”;
- (c) in article 5(3)(a) (notification), for “article 6(4) and section 29(2)(b) and (c)” substitute “article 6(4), section 29(2)(b) and (c) and section 29B(4)(b) and (c)”;
- (d) in article 6(3)(a)(ii) (approval required for grant or renewal of authorisations), after “and (c)” insert “or section 29B(4)(b) and (c)”.

Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010

4.—(1) The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(4) is amended as follows.

(2) In article 3 (prescribed offices, ranks and position with relevant public authorities), at the end of paragraph (2)(aa) omit “and” and insert—

“(ab) column (2) of Part 1B 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 29B of the Act), and”.

(3) For article 4(2) (additional offices, ranks and positions prescribed for urgent cases), substitute—

“(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—

- (a) for the purposes of section 28 or 29 of the Act in the case of an entry in Part 1 of the Schedule;
- (b) for the purposes of section 29 or 29B in the case of an entry in Part 1A of the Schedule;
- (c) for the purposes of section 29B only in the case of an entry in Part 1B; or
- (d) 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.”.

(4) In article 5 (restrictions on the granting of authorisations)—

- (a) in paragraph (1), after “column (2) or (3)” insert “of Parts 1, 1A and 2”;

(3) [S.I. 2010/123](#).

(4) [S.I. 2010/521](#). Article 2(aa) was inserted by [S.I. 2013/2788](#); article 4(2) was amended by [S.I. 2012/1500](#) and by [S.I. 2013/2788](#); article 5 was amended by [S.I. 2013/2788](#); and Part 1A of the Schedule was inserted by [S.I. 2013/2788](#).

(b) after paragraph (1), insert—

“(1A) An individual holding an office, rank or position which is listed in an entry in column (2) or (3) of Part 1A of the Schedule may not grant an authorisation under section 29B unless that individual believes it is necessary for any of the grounds set out in the corresponding entry in column (5) of that Part.

(1B) An individual holding an office, rank or position which is listed in an entry in column (2) or (3) of Part 1B of the Schedule may not grant an authorisation under section 29B unless that individual believes it is necessary for any of the grounds set out in section 29B(5) of the Act which are listed in the corresponding entry in column (4) of that Part.”;

(c) in paragraph (2)—

(i) in sub-paragraph (aa)—

(aa) after “29(3)” insert “or 29B(5)”;

(bb) omit “or” at the end of the sub-paragraph;

(ii) after sub-paragraph (aa), insert—

“(ab) section 29B(5) of the Act in the case of an entry in Part 1B, or”.

(5) In article 8 (restrictions on granting of authorisations apply to more senior offices etc.), for “28 and 29” substitute “28, 29 and 29B”.

(6) In Part 1 of the Schedule (offices etc. and restrictions in respect of public authorities specified in Part 1 of Schedule 1 to the Act)—

(a) in the entry for the Police Service of Northern Ireland, column (3), for “Inspector” substitute “Superintendent”;

(b) in the entry for the Ministry of Justice—

(i) for both entries in column (2), substitute “A civil servant at Band 8 or above of Her Majesty’s Prison and Probation Service”;

(ii) for both entries in column (3), substitute “A civil servant at Band 8 or above of Her Majesty’s Prison and Probation Service”;

(c) in the entry for the Environment Agency, omit “Area Director or”;

(d) in the entry for the Food Standards Agency—

(i) for each entry in column (2) substitute “Grade 6 Deputy Head of the National Food Crime Unit or Head of Litigation in the Legal Department”;

(ii) for each entry in column (3), substitute—

“Section 28 authorisation

Grade 7 Head of Intelligence or Head of Investigations in the National Food Crime Unit

Section 29 authorisation

Grade 7 Head of Intelligence or Head of Investigations in the National Food Crime Unit”.

(7) For the table in Part 1A of the Schedule, substitute the following table—

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Relevant public authorities</i>	<i>Prescribed offices etc</i>	<i>Urgent Cases</i>	<i>Grounds set out in section 29(3) of the Act</i>	<i>Grounds set out in section 29B(5) of the Act</i>
A police force maintained under section 2 of the Police Act 1996 ⁽⁵⁾	Relevant Source Authorisation Assistant Chief Constable Long Term Authorisation Chief Constable	Superintendent	Paragraphs (a), (b), (c), (d) and (e)	Paragraphs (a), (b) and (c)
The City of London Police Force	Relevant Source Authorisation Commander Long Term Authorisation Commissioner	Superintendent	Paragraphs (a), (b), (c), (d) and (e)	Paragraphs (a), (b) and (c)
The Metropolitan Police Force	Relevant Source Authorisation Commander Long Term Authorisation Assistant Commissioner	Superintendent	Paragraphs (a), (b), (c), (d) and (e)	Paragraphs (a), (b) and (c)
The Police Service of Northern Ireland	Relevant Source Authorisation Assistant Chief Constable Long Term Authorisation Chief Constable	Superintendent	Paragraphs (a), (b), (c), (d) and (e)	Paragraphs (a), (b) and (c)
The Police Service of Scotland	Relevant Source Authorisation	Superintendent	Paragraphs (a), (b), (c), (d) and (e)	Paragraphs (a) and (c)

(5) 1996 c. 16. Section 2 was amended by section 99 of, and paragraphs 1 and 4 (1) to (3) of Part 1 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011.

<i>“(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Relevant public authorities</i>	<i>Prescribed offices etc</i>	<i>Urgent Cases</i>	<i>Grounds set out in section 29(3) of the Act</i>	<i>Grounds set out in section 29B(5) of the Act</i>
	Assistant Chief Constable			
	Long Term Authorisation			
	Chief Constable			
The Ministry of Defence Police	Relevant Source Authorisation	Superintendent	Paragraphs (b) and (c)	Paragraphs (a), (b) and (c)
	Assistant Chief Constable			
	Long Term Authorisation			
	Chief Constable			
The Royal Navy Police	Relevant Source Authorisation	Lieutenant Commander	Paragraphs (b) and (c)	Paragraphs (a), (b) and (c)
	Commander			
	Long Term Authorisation			
	Provost Marshal (Navy)			
The Royal Military Police	Relevant Source Authorisation	Major	Paragraphs (b) and (c)	Paragraphs (a), (b) and (c)
	Colonel			
	Long Term Authorisation			
	Provost Marshal (Army)			
The Royal Air Force Police	Relevant Source Authorisation	Squadron Leader	Paragraphs (b) and (c)	Paragraphs (a), (b) and (c)
	Wing Commander			
	Long Term Authorisation			

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(1)	(2)	(3)	(4)	(5)
<i>Relevant public authorities</i>	<i>Prescribed offices etc</i>	<i>Urgent Cases</i>	<i>Grounds set out in section 29(3) of the Act</i>	<i>Grounds set out in section 29B(5) of the Act</i>
The British Transport Police	Provost Marshal (Royal Air Force) Relevant Source Authorisation Assistant Chief Constable Long Term Authorisation Chief Constable	Superintendent	Paragraphs (a), (b), (c), (d) and (e)	Paragraphs (a), (b) and (c)
The National Crime Agency	Relevant Source Authorisation Deputy Director Long Term Authorisation Deputy Director General	Grade 2 Senior Manager	Paragraph (b)	Paragraph (b)
Her Majesty's Revenue and Customs	Relevant Source Authorisation Assistant Director Long Term Authorisation Director Criminal Investigation	Senior Officer	Paragraphs (a), (b), (d), (e) and (f)	Paragraphs (a) and (b)
The Home Office	Relevant Source Authorisation Senior Civil Service pay band 1 with responsibility for criminal investigations in relation to immigration and border security	Grade 6 with responsibility for criminal investigations in relation to immigration and border security	Paragraphs (b), (c) and (d)	Paragraphs (b) and (c)".

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>Relevant public authorities</i>	<i>Prescribed offices etc</i>	<i>Urgent Cases</i>	<i>Grounds set out in section 29(3) of the Act</i>	<i>Grounds set out in section 29B(5) of the Act</i>
Long Term Authorisation				
Director General with responsibility for criminal investigations in relation to immigration and border security				

(8) After Part 1A of the Schedule, insert—

“PART 1B

Offices etc and Restrictions in Respect of Public Authorities Specified in Part A1 of Schedule 1 to the Act

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Relevant public authorities</i>	<i>Prescribed Offices etc</i>	<i>Urgent cases</i>	<i>Grounds set out in section 29B(5)</i>
A police force maintained under section 2 of the Police Act 1996	Superintendent	Inspector	Paragraphs (a), (b) and (c)
The Metropolitan police force	Superintendent	Inspector	Paragraphs (a), (b) and (c)
The City of London police force	Superintendent	Inspector	Paragraphs (a), (b) and (c)
The Police Service of Scotland ⁽⁶⁾	Superintendent	Inspector	Paragraphs (a) and (c)
The Police Service of Northern Ireland	Superintendent	Superintendent	Paragraphs (a), (b) and (c)
The Ministry of Defence Police	Superintendent	Inspector	Paragraphs (a), (b) and (c)
The Royal Navy Police	Commander	Lieutenant Commander	Paragraphs (a), (b) and (c)

⁽⁶⁾ Only provision relating to reserved matters is made for the Police Service of Scotland because the changes made by the Covert Human Intelligence Sources (Criminal Conduct) Act 2021 to the Regulation of Investigatory Powers Act 2000 only relate to reserved matters, within the meaning of the Scotland Act 1998 (c. 46).

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<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Relevant public authorities</i>	<i>Prescribed Offices etc</i>	<i>Urgent cases</i>	<i>Grounds set out in section 29B(5)</i>
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) and (c)
The National Crime Agency	Senior Manager (Grade 2)	Principal (Grade 3)	Officer Paragraph (b)
The Security Service	General Duties 3 or any other Officer at Level 3	–	Paragraphs (a), (b) and (c)
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) and (c)
The Army	Lieutenant Colonel	Major	Paragraphs (a), (b) and (c)
The Royal Air Force	Wing Commander	Squadron Leader	Paragraphs (a), (b) and (c)
Her Majesty's Revenue and Customs	Senior Officer	Higher Officer	Paragraphs (a) and (b)
The Department of Health and Social Care	Grade 6 in the Medicines and Healthcare Products Regulatory Authority	Grade 7 in the Medicines and Healthcare Products Regulatory Authority	Paragraph (b)
The Home Office	Immigration Inspector or Senior Officer with responsibility for immigration and border security investigations and functions	Chief Immigration Officer or Higher Officer with responsibility for immigration and border security investigations and functions	Paragraphs (b) and (c)
The Ministry of Justice	A civil servant at Band 8 or above of Her Majesty's Prison and Probation Service	A civil servant at Band 8 or above of Her Majesty's Prison and Probation Service	Paragraph (b)

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Relevant public authorities</i>	<i>Prescribed Offices etc</i>	<i>Urgent cases</i>	<i>Grounds set out in section 29B(5)</i>
The Competition and Markets Authority	Any member of the Senior Civil Service with responsibility for cartels or criminal enforcement	Grade 6 in the Cartels and Criminal Enforcement Group	Paragraphs (b) and (c)
The Environment Agency	Deputy Director – National Enforcement Service or equivalent Deputy Director	–	Paragraph (b)
The Financial Conduct Authority	A Head of Department in the Enforcement and Financial Crime Division	A Manager in the Enforcement and Financial Crime Division	Paragraph (b)
The Food Standards Agency	Grade 6 Deputy Head of the National Food Crime Unit or Head of Litigation in the Legal Department	Grade 7 Head of Intelligence or Head of Investigations in the National Food Crime Unit	Paragraph (b)
The Gambling Commission	Senior Manager	–	Paragraph (b)
The Serious Fraud Office	Grade 6	–	Paragraph (b)”

19th May 2021

Williams of Trafford
 Minister of State
 Home Office

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes changes to certain Orders and Regulations made under the Regulation of Investigatory Powers Act 2000 (c. 23) (“the 2000 Act”) which are consequential to changes made by the Covert Human Intelligence Sources (Criminal Conduct) Act 2021 (c. 4) (“the 2021 Act”) to the 2000 Act. This Order also makes unrelated minor changes to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (S.I. 2010/521) (“the 2010 Order”).

Article 2 amends the Regulation of Investigatory Powers (Source Records) Regulations 2000 (S.I. 2000/2725) to insert requirements to keep records relating to criminal conduct authorisations given under section 29B of the 2000 Act, as inserted by the 2021 Act.

Article 3 amends the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Matters Subject to Legal Privilege) Order 2010 (S.I. 2010/123) to apply the safeguards that exist for section 29 authorisations which relate to legal professional privilege material to section 29B authorisations as well.

Article 4 amends the 2010 Order in various ways which are consequential on the creation of section 29B authorisations.

Paragraph (2) of that article amends article 3 of the 2010 Order to provide that those designated in column 2 of Part 1B of the Schedule are prescribed for the purposes of section 30(1) of the 2000 Act.

Paragraph (3) amends article 4 of the 2010 Order to include section 29B authorisations within the urgency provisions in article 4.

Paragraph (4) amends article 5 of the 2010 Order to restrict the purposes for which section 29B authorisations may be made by individuals listed in column 2 or 3 of Part 1A and Part 1B of the Schedule.

Paragraph (5) amends article 8 of the 2010 Order with the effect that the offices, ranks or positions specified in Parts 1A and 1B of the Schedule include those individuals holding more senior offices, ranks or positions.

Paragraph (6) makes four minor changes to Part 1 of the Schedule to the 2010 Order which either reflect changes in certain bodies in Part 1 or where other bodies wished to make the individuals holding offices, ranks or positions designated in Part 1 consistent with those to be designated in Part 1A and 1B of the Schedule in relation to section 29B authorisations.

Paragraph (7) amends Part 1A of the Schedule to the 2010 Order to insert a new column (5) which specifies the available grounds set out in section 29B(5) for authorisations to be granted by those holding the offices, ranks or positions which are prescribed in that Part for the purposes of section 30(1) of the 2000 Act.

Paragraph (8) inserts Part 1B into the Schedule to the 2010 Order which specifies the individuals holding offices, ranks or positions in those bodies specified in Schedule A1 to the 2000 Act (which was inserted by the 2021 Act) and the corresponding grounds in section 29B(5) for the purposes of which those holding those offices may grant a section 29B authorisation.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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