

**2010 No.350**

**INVESTIGATORY POWERS**

**The Regulation of Investigatory Powers (Prescription of Offices,  
etc. and Specification of Public Authorities) (Scotland)  
Order 2010**

*Made* - - - - *29th September 2010*

*Laid before the Scottish Parliament* *1st October 2010*

*Coming into force* - - *29th November 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 8(1), 8(4)(b), 9(3) and 28(4) of the Regulation of Investigatory Powers (Scotland) Act 2000(a) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010 and comes into force on 29th November 2010.

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

**Prescribed offices, etc.**

2.—(1) The offices, ranks and positions listed in column 2 of Schedule 1 to this Order (being offices, ranks or positions with the relevant public authorities in column 1) are prescribed for the purposes of section 8(1) of the 2000 Act.

(2) Subject to paragraph (3), where an office, rank or position with a relevant public authority is listed in column 2 of Schedule 1 to this Order, all more senior offices, ranks or positions with that authority are also prescribed.

(3) Where an office, rank or position with a relevant public authority is described in column 2 of Schedule 1 to this Order 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 public authority is a reference to all more senior offices, ranks or positions in that agency, unit, branch, division or part.

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(a) 2000 asp 11. Section 9(3) was amended by paragraph 9(2)(c) of schedule 6 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10).

### **Additional offices, etc. prescribed for urgent cases**

3.—(1) The offices, ranks and positions listed in column 3 of Schedule 1 to this Order (being offices, ranks or positions with the relevant public authorities listed in column 1) are prescribed for the purposes of section 8(1) of the 2000 Act, but only for the cases described in this article.

(2) An individual holding an office, rank or position which is listed in column 3 of Schedule 1 to this Order may only grant an authorisation where it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by an individual in the same authority who holds an office, rank or position listed in column 2.

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

### **Amendment of the 2000 Act**

4. In section 8(3) (persons entitled to grant authorisations under sections 6 and 7) of the 2000 Act omit paragraphs (d) to (g).

### **Revocation**

5. The Orders specified in Schedule 2 to this Order are revoked.

St Andrew's House,  
Edinburgh  
29th September 2010

*KENNY MACASKILL*  
A member of the Scottish Executive

## SCHEDULE 1

Articles 2 and 3

### Prescribed offices, ranks and positions with relevant public authorities for the purposes of sections 6, 7 and 8 of the 2000 Act

<i>Column 1</i> <b>Relevant public authority</b>	<i>Column 2</i> <b>Prescribed offices, ranks and positions</b>	<i>Column 3</i> <b>Urgent cases</b>
A police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967(a)	Superintendent	Inspector
The Scottish Crime and Drug Enforcement Agency	Superintendent; Grade PO7 Authorising Officer	Inspector
The Scottish Administration	<i>Marine Scotland:</i> Chief of Enforcement Unit  <i>Accountant in Bankruptcy:</i> The Accountant in Bankruptcy  <i>Scottish Prison Service:</i> Governor in Charge  <i>Contracted out prisons:</i> the controller appointed under section 107(1)(b) of the Criminal Justice and Public Order Act 1994(b)  <i>Transport Scotland:</i> Director	<i>Scottish Prison Service:</i> Deputy Governor
A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(c)	Assistant Head of Service; Investigation manager	
The Common Services Agency for the Scottish Health Service	<i>NHSScotland Counter Fraud Services:</i> Head of Investigations	
The Scottish Environmental Protection Agency	Director	

(a) 1967 c.77, section 1 was amended by s.146(2) of the Local Government (Scotland) Act 1973 (c. 65) and by paragraph 71(2) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

(b) 1994 c.33, section 107(1)(b) was amended by paragraph 115(4)(a)(i) of the Scotland Act 1998 (Consequential Modifications) (No. 2) Order (S.I. 1999/1820).

(c) 1994 c.39.

## SCHEDULE 2

Article 5

### Revocations

<i>Orders Revoked</i>	<i>References</i>
Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000	S.S.I. 2000/343(a)
Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Amendment Order 2003	S.S.I. 2003/50
Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Amendment Order 2006	S.S.I. 2006/466
Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Amendment Order 2009	S.S.I. 2009/340

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(a) S.S.I. 2000/343, amended by S.S.I. 2003/50, 2006/466, 2009/340 and paragraph 14 of schedule 6(2) to the Police, Public Order and Criminal Justice (Scotland) Act 2006.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order prescribes offices, ranks and positions for the purpose of section 8(1) of the Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) (“the 2000 Act”). Under that section individuals holding such offices, etc may grant authorisations under sections 6 and 7 of the 2000 Act for the use of directed surveillance and covert human intelligence sources respectively.

Article 2(2) provides that where an office, etc is listed in column 2 of Schedule 1, all more senior offices, etc may also grant authorisations under section 6 or 7 of the 2000 Act. Article 2(3) clarifies that if an office, etc is described by reference to an agency, unit, branch, division or part of an authority, article 2(2) only applies to more senior offices, etc within that part of the public authority.

Articles 3(1) and (2) provide that the offices, etc listed in column 3 of Schedule 1 may only grant authorisations under sections 6 or 7 of the 2000 Act in urgent cases. Article 3(3) clarifies that if an office, etc is described by reference to an agency, unit, branch, division or other part of an authority, article 3(2) only applies to more senior offices, etc within that part of the public authority.

Article 4 amends section 8(3) of the 2000 Act to remove a number of health bodies from the list of relevant public authorities for the purposes of sections 6 and 7. These bodies may no longer grant authorisations for the use of directed surveillance and covert human intelligence sources.

As this Order is consolidating, article 5 revokes the previous Orders detailed in Schedule 2.

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