

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Regulations, 2004 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* G.S.I. No. 22 of 2004; as amended by the: Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 472); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017 (No. III of 2017); Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVII of 2018); Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Amendment) Regulations, 2023 (G.S.I. No. 19 of 2023).

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ENTITLED

The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Regulations, 2004

ARRANGEMENT OF REGULATIONS

1. Citation, commencement and interpretation.
2. Prescribed offices etc for access to communications data.
3. Prescribed offices etc for authorisation of directed surveillance and covert human intelligence sources.
4. Prescribed offices etc for grant of authorisation for intrusive surveillance.
5. Prescribed offices etc for urgent authorisation of property interference.
6. More senior offices, ranks and positions.
7. Performance of duty to cancel.

SCHEDULE

- | | |
|----------|---|
| Part I | Prescription of offices etc for persons with relevant public authorities who may be authorised to act on behalf of a designated person for the purposes of Chapter II of Part I of the Law. |
| Part II | Prescription of offices etc for persons with applicable public authorities designated to grant authorisation under sections 23 and 24 of the Law. |
| Part III | Prescription of offices etc for persons in the same public authority authorised to act on behalf of senior authorising officers for the purposes of section 28(1) of the Law. |
| Part IV | Prescription of offices etc for persons designated to grant authorisations for the purposes of section 41 of the Law. |

Explanatory Note.

(Made on 11th June, 2004.)

The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Regulations, 2004

THE STATES HOME DEPARTMENT, in exercise of the powers conferred on it by sections 20(2), 25, 28(1), 36(4), 41 and 65 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003^a, hereby makes the following Regulations: –

Citation, commencement and interpretation.

1. (1) These Regulations may be cited as the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Regulations, 2004 and shall come into force on 14th June, 2004.

(2) In these Regulations –

"**the Law**" means the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003,

"**the Schedule**" means the Schedule to these Regulations.

Prescribed offices etc for access to communications data.

2. Individuals holding the offices, ranks and positions listed in column 3 of Part I of the Schedule (being offices, ranks or positions with the relevant public authorities in column 2) are hereby prescribed as persons who may be authorised to act on behalf of the designated person named in column 1 for the purposes of Chapter II of Part I of the Law.

^a Order in Council No. XXX of 2003.

Prescribed offices etc for authorisation of directed surveillance and covert human intelligence sources.

3. (1) The offices, ranks and positions listed in column 2 of Part II of the Schedule (being offices, ranks or positions with the applicable public authorities in column 1) are hereby prescribed for the purposes of section 25(1) of the Law.

(2) The additional offices, ranks and positions listed in column 3 of Part II of the Schedule (being offices, ranks or positions with the applicable public authorities in column 1) are hereby prescribed for the purposes of section 25(1) of the Law, for the cases described in paragraph (3).

(3) An individual holding an office, rank or position which is prescribed by virtue of paragraph (2) 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 holding an office, rank or position prescribed by paragraph (1).

Prescribed offices etc for grant of authorisation for intrusive surveillance.

4. (1) Individuals holding the offices, ranks and positions listed in column 2 of Part III of the Schedule (being offices, ranks or positions with the same public authority) are hereby prescribed as persons who may be authorised to act on behalf of the senior authorising officers named in column 1 for the purposes of section 28(1) of the Law.

(2) Individuals holding the additional offices, ranks and positions listed in column 3 of Part III of the Schedule (being offices, ranks or positions with the same public authority) are hereby prescribed as persons who may be authorised to act on behalf of the senior authorising officers for the purposes of section 28(1) of the Law, for the cases described in paragraph (3).

(3) An individual holding an office, rank or position which is

prescribed by virtue of paragraph (2) may only be authorised to act on behalf of the senior authorising officer 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 holding an office, rank or position prescribed by paragraph (1).

Prescribed offices etc for urgent authorisation of property interference.

5. Persons holding the offices, ranks and positions listed in column 2 of Part IV of the Schedule (being offices, ranks or positions with the public authority named in column 1) are hereby designated for the purposes of section 41(2) of the Law.

More senior offices, ranks and positions.

6. In these Regulations, where an office, rank or position with a public authority is prescribed in the Schedule by virtue of Articles 2, 3, 4 and 5, all more senior offices, ranks or positions with that authority are also prescribed.

Performance of duty to cancel.

7. (1) Where any duty imposed by section 36 of the Law would otherwise fall on a person who is no longer available to perform it, that duty is to be performed by –

- (a) the person, if any, appointed for the purpose of these Regulations in accordance with paragraph (2),
- (b) where no such person has been appointed, the person, if any, who holds the same office, rank or position in the same public authority as was held by the person who is no longer available and who has taken over that person's responsibilities or most of them.

(2) The person making an appointment for the purpose of these

Regulations, and the person appointed, must each be a person holding the same office, rank or position (or a more senior one) in the same public authority as was held by the person who is no longer available.

SCHEDULE

Articles 2, 3, 4 and 5

PART I

Prescription of offices etc for persons with relevant public authorities who may be authorised to act on behalf of a designated person for the purposes of Chapter II of Part I of the Law.

| (1) | (2) | (3) |
|--|----------------------------------|--|
| Designated person | Relevant public authority | Prescribed offices etc |
| Chief Officer of the Island Police Force | Island Police Force | Chief Inspector for Line/Advanced Data (Itemised Billing) Inspector for Personal Data (Subscriber Checks) |
| Chief Officer of Customs and Excise | Customs and Excise | Surveyor for Line/Advanced Data (Itemised Billing) |

Consolidated text

| | | |
|--|-------------------------------------|--|
| | | Senior Investigating Officer for Personal Data (Subscriber Checks) |
| [The Director of the Economic and Financial Crime Bureau | Economic and Financial Crime Bureau | The Head of the FIU (Itemised Billing) |
| | | Deputy Head of Operations (Subscriber Checks) FIU Operations Manager (Subscriber Checks)] |

PART II

Prescription of offices etc for persons with applicable public authorities designated to grant authorisation under sections 23 and 24 of the Law.

| (1) | (2) | (3) | |
|-----------------------------|---------------|-------------------------------|----------------------|
| Applicable authority | public | Prescribed offices etc | Urgent cases |
| Island Police Force | | Chief Inspector | Inspector |
| Customs and Excise | | Surveyor | Senior Investigation |

Consolidated text

| | | |
|--|---|---|
| | | Officer |
| GCHQ | GC8 | |
| The Security Service | General Duties 3 or any other officer at Level 3 | |
| Secret Intelligence Service | Grade 6 or equivalent | |
| Royal Navy | Commander | Lieutenant Commander |
| Army | Lieutenant Colonel | Major |
| Royal Air Force | Wing Commander | Squadron Leader |
| Guernsey Financial Services Commission | Director General (Director), Fiduciary Services Intelligence Division | Assistant Director, Fiduciary Services Intelligence Division |
| [Policy & Resources Committee] | For the Income Tax Authority – [Director of the Revenue Service] | [Deputy Director of the Revenue Service] or Director of Compliance. |
| | For any other function – Chief Officer | Director of Risk and Assurance. |
| [Committee for Employment & Social Security] | Senior Officer (Grade 3) | |

Consolidated text

| | | |
|--|--|---|
| [Committee for the Environment & Infrastructure] | For Planning – Chief Planning Officer | Development Control Manager |
| | For any other functions – Director of Environmental Services and Operations | Traffic and Transport Services Manager |
| [Committee for Economic Development] | For Sea Fisheries – Senior Sea Fisheries Officer | |
| | For other primary industries – Director of Primary Industries | |
| | For Commerce and Employment – Director of Commerce and Employment | |
| | For any other functions – Senior Executive and Legal Officer | |
| | | |

Consolidated text

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|--|--|---|
| [Committee for Home Affairs] | For the Prison – the Prison Governor | |
| [Committee for Health & Social Care] | For Board of Health functions – the Director of Corporate Services or Director of Finance | |
| [Committee for the Environment & Infrastructure] | For the Water Board – Administration Manager | |
| [Committee for Employment & Social Security] | Chief Officer | Director of Housing Control or Director of States' Houses |
| The Constables of Sark | The Constable or the Vingtenier | |
| [Agriculture, Environment, Sea Fisheries & Pilotage Committee] | Sark Sea Fisheries Officer | |
| [The Director of the Economic and Financial Crime Bureau] | The Head of the FIU | Deputy Head of Operations or |

Consolidated text

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|--|--|----------------------------|
| | | FIU Operations Manager] |
|--|--|----------------------------|

PART III

Prescription of offices etc for persons in the same public authority authorised to act on behalf of senior authorising officers for the purposes of section 28(1) of the Law.

| (1) | (2) | (3) |
|--------------------------------------|--------------------------------|----------------------|
| Senior Authorising Officer | Prescribed offices etc. | Urgent cases |
| Chief Officer of Island Police | Superintendent | Chief Inspector |
| Chief Officer of Customs and Excise | [Deputy Chief Officer] | [Surveyor] |
| [Economic and Financial Crime Bureau | Head of Operations | The Head of the FIU] |

PART IV

Prescription of offices etc for persons designated to grant authorisations for the purposes of section 41 of the Law.

Consolidated text

| | |
|--------------------------------------|-----------------------------------|
| (1) | (2) |
| Public authority | Prescribed offices etc |
| Island Police Force | Chief Inspector |
| Customs and Excise | Surveyor |
| The Constables of Sark | [The Constable or the Vingtenier] |
| [Economic and Financial Crime Bureau | The Head of the FIU] |

NOTES

In the Schedule,

the words in square brackets at the end of the Tables in, first, Part I and, second, Part II were inserted, third, the words "Deputy Chief Officer" and, fourth, "Surveyor" in square brackets in columns (2) and (3) in the Table in Part III were substituted, fifth, the words in square brackets at the end of that Table were inserted, sixth, the words "The Constable or the Vingtenier" in square brackets in the Table in Part IV were substituted and, seventh, the words in square brackets at the end of that Table were inserted by the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Amendment) Regulations, 2023, respectively regulation 2(2), regulation 2(3), regulation 2(4)(a), regulation 2(4)(b), regulation 2(4)(c), regulation 2(5)(a) and regulation 2(5)(b), with effect from 20th March, 2023;

the words "Policy & Resources Committee" in square brackets in the Table in Part II were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a) and section 4, with effect from 1st May, 2016;

the words "Director of the Revenue Service" and "Deputy Director of the Revenue Service" in square brackets in the Table in Part II were

*substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance;*¹

the words "Committee for Employment & Social Security" in square brackets, where first occurring in the Table in Part II, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 13 and section 4, with effect from 1st May, 2016;

the words "Committee for the Environment & Infrastructure" in square brackets, where first occurring in the Table in Part II, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 4(a) and section 4, with effect from 1st May, 2016;

the words "Committee for Economic Development" in square brackets in the Table in Part II were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a) and section 4, with effect from 1st May, 2016;

the words "Committee for Home Affairs" in square brackets in the Table in Part II were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a) and section 4, with effect from 1st May, 2016;

the words "Committee for Health & Social Care" in square brackets in the Table in Part II were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5 and section 4, with effect from 1st May, 2016;

the words "Committee for the Environment & Infrastructure" in square brackets, where second occurring in the Table in Part II, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 12(a) and section 4, with effect from 1st May, 2016;

the words "Committee for Employment & Social Security" in square brackets, where second occurring in the Table in Part II, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 7(a) and section 4, with effect from 1st May, 2016;

the words "Agriculture, Environment, Sea Fisheries & Pilotage Committee" in square brackets in the Table in Part II were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017, section 2, Schedule, paragraph 2 and section 4, with effect from 18th January, 2017.

The functions, rights and liabilities of the Treasury and Resources

Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Social Security Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 13 and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Environment Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for the Environment & Infrastructure and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 4(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5 and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the

2016 Ordinance.

The functions, rights and liabilities of the Public Services Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for the Environment & Infrastructure and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 12(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Housing Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 7(a) and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The functions, rights and liabilities of the Sark Sea Fisheries Committee and of its Chairman arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Agriculture, Environment, Sea Fisheries & Pilotage Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017, section 1, Schedule, paragraph 2 and section 4, with effect from 18th January, 2017, subject to the savings and transitional provisions in section 3 of the 2017 Ordinance.

EXPLANATORY NOTE

(This Note is not part of the Regulations) **

These Regulations prescribe offices, ranks and positions for the purposes of sections 20(2), 25(1), 28(1), and 41(2) of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 ("the Law"), under which individuals holding such offices, ranks or positions as are prescribed may grant or may be authorised to grant authorisations and notices for the purposes of the Law.

Regulation 2 and Part I of the Schedule prescribe those offices, ranks and positions in the Island Police Force and in Customs and Excise who may grant an authorisation or issue notices for the purposes of Chapter II of Part I of the Law. Regulation 3 and Part II of the Schedule provide that an individual holding an office, rank or position listed in column 2 of Part II of the Schedule, with a public authority listed in column 1, may grant authorisations under either section 23 or section 24 of the Law. The public authorities listed in column 1 of Part II of the Schedule to the Regulations are the authorities listed in Schedule 1 to the Law, as amended by the Regulation of Investigatory Powers (Applicable Public Authorities) Regulations, 2004.

Regulation 4 provides that individuals holding the ranks or positions listed in column 2 of Part III of the Schedule may act on behalf of the Chief Officers of the Police and Customs in granting authorisations under section 26 of the Law.

Regulation 5 prescribes in Part IV of the Schedule those ranks or positions with the Island Police Force or Customs and Excise who may grant authorisations in the situations set out in section 41(1) of the Law.

The offices, ranks and positions prescribed include individuals holding more senior posts. Additional offices, ranks and positions are also prescribed for urgent cases in respect of sections 23, 24, and 26 of the Law.

Regulation 7 addresses the situation where the duty to cancel an authorisation which has been granted under sections 23, 24, and 26 of the Law falls on a person who is no longer able to perform it. Regulation 7(1)(b) provides that the duty falls instead on the person who has taken over most of that individual's responsibilities. There is also a power to appoint a person for the specific purpose of cancelling an authorisation.

** The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending Statutory Instruments with their own Explanatory Notes, which latter should thus be, if necessary, consulted in the original.

1 These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.