EXPLANATORY MEMORANDUM TO

THE DATA PROTECTION ACT 2018 (QUALIFYING COMPETENT AUTHORITIES) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Dan Jarvis, Minister of State for Security at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Krisztina Katona, Deputy Director for Data and Identity Directorate, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Daniel Lucas at the Home Office (Email: Daniel.Lucas@homeoffice.gov.uk) and Anjali Singh at the Home Office (Email: Anjali.Singh3@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 To enable closer operational working to safeguard national security this instrument specifies which competent authorities can be regarded as "qualifying competent authorities" under Section 82(2A) of the Data Protection Act 2018 ("DPA 2018"). These 'qualifying competent authorities' will then be able to apply, together with at least one intelligence service, for a designation notice from the Secretary of State, to jointly process personal data under Part 4 of the DPA 2018, where it is required for the purposes of safeguarding national security.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The Home Secretary is exercising the power, under Section 82(2A) of the DPA 2018, as inserted by the Data (Use and Access) Act 2025, to make regulations to introduce and specify a new list of twenty-three competent authorities (as defined in Section

30(1) of the DPA 2018[1]) which will be qualifying competent authorities under Section 82(2A). Qualifying competent authorities will then, together with at least one intelligence service, be able to apply for a designation notice from the Secretary of State under Section 82A of the DPA 2018 where it is required for the purposes of safeguarding national security.

5.2 The following competent authorities are qualifying competent authorities for the purposes of the DPA 2018:

1. Any United Kingdom government department other than a non-ministerial government department.
2. The chief constable of a police force maintained under section 2 of the Police Act 1996.
3. The Commissioner of Police of the Metropolis.
4. The Commissioner of Police for the City of London.
5. The Chief Constable of the Police Service of Northern Ireland.
6. The Chief Constable of the Police Service of Scotland.
7. The Chief Constable of the British Transport Police.
8. The Chief Constable of the Civil Nuclear Constabulary.
9. The Chief Constable of the Ministry of Defence Police
10. The Provost Marshal of the Royal Navy Police.
11. The Provost Marshal of the Royal Military Police.
12. The Provost Marshal of the Royal Air Force Police.
13. The Provost Marshal for serious crime.
14. The Chief Officer of—
    (a) a body of constables appointed under provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847;
    (b) a body of constables appointed under an order made under section 14 of the Harbours Act 1964;
    (c) the body of constables appointed under section 154 of the Port of London Act 1968 (c.xxxii).
15. A body established in accordance with a collaboration agreement under section 22A of the Police Act 1996.
16. The Commissioners for Her Majesty's Revenue and Customs
17. The Director General of the National Crime Agency.
18. Her Majesty's Land Registry.
19. The Parole Board for England and Wales.
20. The Parole Board for Scotland.
21. The Parole Commissioners for Northern Ireland.
22. The Probation Board for Northern Ireland.
23. A person who is, under or by virtue of any enactment, responsible for securing the electronic monitoring of an individual.

5.3 This will enable enhanced collaboration, under a single DPA regime, between qualifying competent authorities (usually a law enforcement agency/agencies) and intelligence service(s), under Part 4 of the DPA 2018, allowing them to jointly process data in real time. Without this capability, law enforcement agencies and intelligence

[1] Data Protection Act 2018

services working together would have to share data back and forth between their respective DPA regimes with all the inefficiency and friction that creates.

5.4 All the qualifying competent authorities listed in these regulations have been included on the basis that they may work closely with the intelligence services in such a manner that a designation notice may be appropriate for some of their joint working. For reasons related to national security, the Government is not able to provide further detail as to why one competent authority has been included as a qualifying competent authority and another has not. The list of qualifying competent authorities will be kept under regular review and may be amended by further affirmative regulations, at any time the Secretary of State sees fit.

5.5 When applying for a designation notice, qualifying competent authorities and intelligence services must demonstrate that their proposed processing is required for safeguarding national security, and the Secretary of State, following consultation with the Information Commissioner's Office ("ICO"), must be satisfied that is the case. Competent authorities not listed in these regulations will not be able to apply for a designation notice and therefore will not be able to jointly process data with the intelligence services.

What was the previous policy, how is this different?

5.6 Under the DPA 2018, authorities processing for law enforcement purposes and intelligence services are subject to two separate legislative data processing regimes for processing personal data. This precludes a joint controllership between both entities and makes working together more difficult, especially in the context of public safety and national security.

5.7 Sharing data across regimes presents challenges to joint operational working capabilities, especially where shared, real-time access to data is required. For example, working in silos with controllers retaining their own copies of data rather than working from a single, shared data set can make it difficult for controllers to take decisions on matters relating to national security. Controllers must instead share data back and forth between DPA regimes.

5.8

5.9 As a result, there is a clear public interest in enabling closer joint working between law enforcement bodies and the intelligence services in matters of national security, as highlighted by reports into the Fishmongers Hall[2] and Manchester Arena[3] terrorist attacks. These reports noted difficulties in the processes around sharing relevant information between the intelligence services and relevant competent authorities.

5.10 Therefore, to ensure law enforcement agencies and intelligence services can jointly use data in real time to maintain public safety and national security, Section 82(2A) and 82A of the DPA 2018, as inserted by the Data (Use and Access) Act 2025, enables a qualifying competent authority (or authorities) to jointly process personal data with an intelligence service (or intelligence services) under Part 4 of the DPA 2018, where it is required for the purposes of safeguarding national security.

[2] https://www.judiciary.uk/wp-content/uploads/2021/11/Fishmongers-Hall-Inquests-Prevention-of-future-deaths-report-2021-0362_Published-by-Chief-Coroner.pdf

[3] Manchester Arena Inquiry Volume 3: Radicalisation and Preventability

6. Legislative and Legal Context

How has the law changed?

6.1 The Data Protection Act (DPA) 1998 ("DPA 1998") provided a single, unified regime for anyone processing personal data meaning all controllers and processors in the UK were subject to the same overarching data protection standards. As a result, the DPA 1998 allowed law enforcement and the intelligence services to form joint controllerships, allowing them to jointly process data under a single regime.

6.2 Following the coming into force of the General Data Protection Regulation (GDPR) and the DPA 2018 (which implemented the GDPR and Law Enforcement Directive into domestic law), the UK has three distinct regimes governing the processing of personal data: The UKGDPR, which applies to general processing; Part 3 of the DPA 2018, which governs processing for law enforcement purposes; and Part 4 of the DPA 2018, which governs processing undertaken by intelligence services.

6.3 As such, law enforcement agencies operating under Part 3 of the DPA 2018 are unable to form joint controllerships with, and therefore unable to process data jointly with, the intelligence services who operate under Part 4 of the DPA 2018. Given both controllers are subject to different data protection regimes, it has presented challenges to joint operational working capabilities, especially where shared, real-time access to data is required.

6.4 As a result of this, the Data (Use and Access) Act 2025 amended Part 4 of the DPA 2018 (specifically Section 82 of the DPA 2018) to allow qualifying competent authorities and the intelligence services to jointly process data under a single data protection regime where the processing is required for the purposes of safeguarding national security.

6.5 Section 82 of the DPA 2018 provides the scope of Part 4 DPA 2018, which makes clear that this regime now applies to processing by an intelligence service (with a definition of intelligence service provided in Section 82(2) DPA 2018), and to processing of personal data by a qualifying competent authority where the processing is the subject of a designation notice granted by the Secretary of State.

6.6 Section 82(2A) of the DPA 2018, as inserted by the Data (Use and Access) Act 2025, requires the Secretary of State to specify in regulations those qualifying competent authorities who, together with an intelligence service(s), are eligible to apply for and be issued with a designation notice. This instrument specifies qualifying competent authorities for that purpose.

Why was this approach taken to change the law?

6.7 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 In accordance with Section 182(2) of the DPA 2018, the Secretary of State is required to consult with the ICO before making Regulations. The ICO confirmed that they are content with the list of qualifying competent authorities. Given these Regulations are only introducing a list of qualifying competent authorities, to support the primary policy, no wider consultation was required.

8. Applicable Guidance

8.1 No guidance is being provided alongside this instrument as it only specifies those competent authorities who will be considered qualifying competent authorities under s.82(2A) DPA.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there are no costs or benefits arising from introducing a list of 'qualifying' competent authorities. The primary policy and its economic impact have already been appraised as part of the Data (Use and Access) Act 2025 for which the Impact Assessment is available on gov.uk.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies as this instrument only creates a list of qualified competent authorities.

9.3 The legislation does not impact small or micro businesses as this instrument only creates a list of qualified competent authorities.

9.4 There is no, or no significant, impact on the public sector as this instrument only creates a list of qualified competent authorities.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that it will be monitored over the course of five years by the Home Office.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State for Security has made the following statement regarding Human Rights:

"In our view the provisions of the Data Protection Act 2018 (Qualifying Competent Authorities) Regulations 2025 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").