EXPLANATORY MEMORANDUM TO

THE ELECTRONIC COMMUNICATIONS (NETWORKS AND SERVICES) (DESIGNATED VENDOR DIRECTIONS) (PENALTIES) ORDER 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Science, Innovation and Technology and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Sir Chris Bryant MP, Minister of State for Data Protection and Telecoms at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

2.2 Kevin Adams, Deputy Director for Telecoms Security and Resilience, at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Adi Rao at the Department for Science, Innovation and Technology Telephone: 07707160555 email: telecomseconomicsecurity@dsit.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 The Secretary of State has the power under the Communications Act 2003 (as amended by the Telecommunications (Security) Act 2021) ("the Act") to impose a penalty on a public communications provider ("provider")[1] who does not comply with a designated vendor direction or related compliance plan. This instrument makes provision in relation to the calculation of such a penalty, which may, in the case of contravention of a designated vendor direction, be up to 10% of the provider's turnover. This instrument specifies the relevant elements of a provider's business that are to be taken into account for the purpose of calculating turnover.

4.2 This instrument also makes consequential amendments to the Electronic Communications (Networks and Services) (Penalties) (Rules for Calculation of Turnover) Order 2003 (S.I. 2003/2712) (as amended by S.I. 2020/1470) ("2003 Order").

[1] "public communications provider" means (a) a provider of a public electronic communications network; (b) a provider of a public electronic communications service; or (c) a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service (section 151 (1) of the Act).

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 A designated vendor direction can be issued by the Secretary of State to a provider under section 105Z1(1) of the Act. A designated vendor direction may impose requirements on a provider with respect to the use of goods, services or facilities supplied, provided or made available by a 'designated vendor'.[2] A designated vendor direction can be issued by the Secretary of State where they consider that it is necessary in the interests of national security and the requirements imposed by a designated vendor direction are proportionate to what is sought to be achieved by the direction.[3]

5.2 The Secretary of State has powers to monitor and enforce compliance with a designated vendor direction as set out in sections 105Z18-105Z24 of the Act, including the power to impose penalties for non-compliance. Any such penalty must be appropriate and proportionate to the non-compliance. Specifically, section 105Z19(2) of the Act states that the amount of a penalty must not exceed 10% of the turnover of a provider's relevant business for the relevant period.[4] Turnover based penalties enable the issuing of penalties that are proportionate to the size of the undertaking concerned and provide a more effective deterrent.

5.3 Section 105Z19(7) of the Act specifies that the rules for calculating a provider's turnover and determining what is to be treated as the network, service, facility, or business by reference to which the calculation of turnover is made are to be set out in an order made under section 97(3)(a) of the Act.

5.4 There are currently no relevant rules that the Secretary of State can use to calculate a provider's turnover. This instrument's principal effect is to remedy that.

5.5 The policy intention of this instrument is for the rules set out in the existing 2003 Order, that currently apply to "notified providers" under section 96 of the Act,[5] to apply when calculating turnover for the purposes of enforcement of a designated vendor direction. In summary, the turnover will be:

- calculated in conformity with accounting practices and principles which are generally accepted in the United Kingdom; and
- limited to the amounts derived by that provider from the relevant business after deduction of sales rebates, value added tax and other taxes directly related to turnover.

[2] "designated vendor" means a person designated by a designation notice (section 151(1) of the Act). "designation notice" has the meaning given to it by section 105Z8(1) of the Act i.e. the Secretary of State may issue a notice designating a person for the purposes of a designated vendor direction.
[3] Sections 105Z1(2)(a) and (b) of the Act.
[4] "relevant period" means: i) the period of one year ending on 31 March before the notice of contravention; ii) the period the business has been operating if it is less than a year; or iii) the year before the business ceased to operate if it had stopped operating before the notification (section 105Z19(8) of the Act).
[5] A notified provider is a person who has been given a notification under section 94 of the Act. Section 94 of the Act sets out that Ofcom gives a person that notification.

5.6 Moreover:

- if the provider's relevant business consists of two or more undertakings that each prepare accounts, then the turnover shall be calculated by adding together the turnover of each undertaking; and
- any aid granted by a public body to a provider shall be included in the calculation of turnover if the provider is the recipient of the aid and if the aid is directly linked to the carrying out by that provider of the relevant business.

5.7 This instrument amends the 2003 Order by substituting references to "notified provider" and "provider" with "person" to ensure that the Secretary of State can use these rules to calculate turnover for the purposes of enforcement under sections 105Z18 – 105Z19 of the Act.

5.8 This instrument also sets out that all of the relevant business activities as set out in section 105Z19(8) of the Act are included in the turnover calculation for a provider. These activities are:

- the provision of a public electronic communications network;
- the provision of a public electronic communications service; and
- the making available of facilities that are associated facilities by reference to such a network or service.

What was the previous policy, how is this different?

5.9 The Telecommunications (Security) Act 2021 introduced new powers relating to designated vendor directions and the enforcement of those directions. These powers are explained in the above section. There were no previous national security powers in relation to vendor security in the telecommunications sector.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument specifies how a provider's relevant business is to be calculated as part of the relevant consideration for determining the penalty amount under section 105Z19 of the Act, as follows:

so much of each business as consists in:

- the provision of a public electronic communications network (if any);
- the provision of a public electronic communications service (if any); and
- the making available of facilities that are associated facilities by references to those networks or services (if any).

6.2 This instrument makes a number of consequential amendments to the 2003 Order, primarily substituting the term "notified provider" and "provider" for "person".

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was undertaken for this instrument. There is no statutory duty to consult on this instrument and the department does not consider it appropriate in the circumstances, given the technical nature of the instrument, to consult.

8. Applicable Guidance

8.1 There is no applicable guidance required for this instrument. The Secretary of State will publish guidelines on how they will approach enforcement of designated vendor directions issued under the Act shortly.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has not been prepared for this instrument. The instrument does not affect the statutory maximum for penalties set out in the Telecommunications (Security) Act 2021, which is 10% of the turnover of a provider's relevant business for the relevant period. Given that penalties must be appropriate and proportionate to the non-compliance, these will be determined entirely on a case-by-case basis, which means that estimating the resulting impact to businesses is not possible at this stage. Moreover, there is no existing evidence that can inform any view of future levels of non-compliance and penalties that may result as a consequence of this.

Impact on businesses, charities and voluntary bodies

9.2 This order may result in an impact to businesses in relation to penalties resulting from non-compliance. It is not possible to anticipate costs to businesses due to the reasons set out in 9.1.

9.3 We do not anticipate any significant impact on charities or voluntary bodies as a result of the legislation.

9.4 The legislation does impact small or micro businesses. No specific action is proposed to minimise the impact of the legislation on small or micro businesses given the uncertain nature of this impact, as set out in 9.1.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This legislation will be monitored and reviewed alongside sections 105Z1 – 105Z29 of the Act. A post implementation review is intended to be completed of these sections and this instrument in 2026.

10.2 This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Sir Chris Bryant MP has made the following statement:

"It is not appropriate in the circumstances to make provision for review as, taking into account the economic impact of this provision, a review would be disproportionate."

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 Data Protection and Telecoms has made the following statement regarding Human Rights:

"In my view the provisions of The Electronic Communications (Networks and Services) (Designated Vendor Directions) (Penalties) Order 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").