EXPLANATORY MEMORANDUM TO

THE INVESTIGATORY POWERS (CODES OF PRACTICE) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 The instrument brings into force five codes of practice regarding functions carried out under the Investigatory Powers Act 2016 ("the Act").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 Paragraph 1 of Schedule 7 to the Act requires the Secretary of State to issue codes of practice about the exercise of functions conferred by virtue of the Act.

4.2 Paragraph 6 of Schedule 7 to the Act sets out the effect of the codes of practice. A person must have regard to the codes when exercising any functions to which the codes relate. The codes are admissible as evidence and a court or tribunal may take into account a failure to have regard to them.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of the United Kingdom.

5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Security, Rt Hon Ben Wallace MP, has made the following statement regarding Human Rights:

"In my view the provisions of The Investigatory Powers (Codes of Practice) Regulations 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 Schedule 7 to the Act requires codes of practice about the exercise of the functions conferred by the Act to be issued. The Government intends to issue six codes of practice.

7.2 The five codes brought into force by these Regulations are:

- Bulk Acquisition of Communications Data: about the exercise of functions conferred by Chapter 2 of Part 6 of the Act;
- Equipment Interference: about the exercise of functions conferred by Part 5 and Chapter 3 of Part 6 of the Act;
- Interception of Communications: about the exercise of functions conferred by Part 2 and Chapter 1 of Part 6 of the Act;
- National Security Notices: about the exercise of functions relating to national security notices, which may be given under section 252 of the Act;
- Intelligence Services' Retention and Use of Bulk Personal Datasets: about the exercise of functions conferred by Part 7 of the Act.

The intention is that a sixth code of practice, about communications data, will be brought into force at a later date.

7.3 These codes set out the processes and safeguards governing the use of investigatory powers by public authorities including the police and security and intelligence agencies. They give detail on how the relevant powers should be used, including examples of best practice. They are intended to provide additional clarity and to ensure the highest standards of professionalism and compliance with this important legislation.

7.4 These codes are primarily intended to guide those public authorities which are able to exercise powers under the Act. They provide information on the processes associated with applying to use, and using, each of the powers, as well as the safeguards and oversight arrangements that will ensure the powers are used in the intended manner. The codes will also be informative to staff of telecommunications and postal operators which may be served with warrants or given notices under the Act.

Consolidation

7.5 Not applicable.

8. Consultation outcome

8.1 A public consultation on the Investigatory Powers Act Codes of Practice has been carried out. The response to the consultation is available at www.gov.uk

9. Guidance

9.1 The Codes of Practice brought into effect by this instrument contain guidance, including guidance about the effect of the Codes.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. However, the codes of practice are about the exercise of functions under the Act and a full impact assessment was prepared for that legislation.

11. Regulating small business

11.1 There is no impact on small business

12. Monitoring & review

12.1 Section 260 of the Investigatory Powers Act 2016 requires the Secretary of State to report on the operation of the Act, after a period of 5 years and 6 months from Royal Assent. The report must be published and laid before Parliament. In preparing the report the Secretary of State must take into account any report on the operation of the Act produced by a Select Committee of either House.

13. Contact

13.1 Home Office Public Enquiries; public.enquiries@homeoffice.gsi.gov.uk; 0207 035 4848.