EXPLANATORY MEMORANDUM TO

THE INVESTIGATORY POWERS (CODES OF PRACTICE, REVIEW OF NOTICES AND TECHNICAL ADVISORY BOARD) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

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

2. Declaration

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

2.2 Lucy Montgomery-Pott, Deputy Director for the Investigatory Powers Unit, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lucy Montgomery-Pott at the Home Office Telephone: 03001056004 or email: IPUenquiries@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 This instrument brings into force eight new and revised Codes of Practice (Codes), which provide operational guidance for public authorities to have regard to when making an application to use, and using, the powers in the Investigatory Powers (Amendment) Act 2024. The instrument also includes several provisions relating to the notices regime under the Investigatory Powers Act 2016 (IPA).

Where does the legislation extend to, and apply?

4.2 The territorial 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 Investigatory Powers (Amendment) Act 2024 made targeted changes to the IPA, as outlined below, to enable law enforcement and intelligence agencies to continue to tackle a range of evolving threats in the face of new technologies and increasingly sophisticated terrorist and criminal groups.

Codes of Practice

5.2 This instrument brings into force the following five revised Codes.

Bulk Acquisition of Communications Data

5.3 This Code relates to bulk acquisition warrants under Chapter 2 of Part 6 IPA. Bulk acquisition warrants authorise or require the person to whom it is addressed to obtain the Communications Data described in the warrant from a telecommunications operator, as well as authorising the selection for examination of the acquired Communications Data, as specified in the warrant.

5.4 The Code has been updated to reflect an amendment which makes provision for the Investigatory Powers Commissioner (IPC) to notify affected individuals of serious personal data breaches relating to warrants issued under the IPA, if the IPC determines it is in the public interest to do so. The Communications Data, Interception, and Equipment Interference Codes are also being updated to reflect this change.

Bulk Personal Datasets (Part 7)

5.5 This Code provides guidance on the procedures that must be followed before bulk personal datasets (BPD) can be retained and examined by the Security Service, the Secret Intelligence Service and the Government Communications Headquarters, in accordance with Part 7 IPA.

5.6 The Code has been updated to reflect amendments which allow for the extension of a BPD warrant from 6 to 12 months, and which make clear that the Heads of the Intelligence Services can delegate certain existing functions in relation to BPD warrants.

Communications Data

5.7 This Code provides guidance on the procedures to be followed when acquisition of Communications Data takes place under the provisions in Part 3 IPA. The Code has been updated to reflect several amendments, including:

a) Changes to section 11 IPA, firstly to define 'lawful authority' for the purposes of the section 11 offence of acquiring Communications Data without lawful authority, and secondly to remove from the scope of section 11 the sharing of Communications Data between public authorities where the public authority providing the communications data is also a telecommunications operator.

b) Changes to section 12 IPA to restore regulatory and supervisory information gathering powers to public authorities listed on Schedule 4 and new Schedule 2A to the IPA.

c) Changes to section 261 IPA to remove any potential ambiguity by setting out that subscriber and account data amount to Communications Data when it is to assist in the identification of an entity.

d) Adding new condition D to the existing list of conditions A to C for the use of Internet Connection Records at section 62 IPA.

Equipment Interference

5.8 This Code provides guidance on when an equipment interference warrant is required or available to authorise equipment interference activity, the procedures that must be followed before equipment interference can be carried out, and on the examination, retention, destruction and disclosure of any information obtained by means of the

interference – as provided for in Part 5 and Chapter 3 of Part 6 IPA. The Code has been updated to reflect several amendments, including:

a) Making provision for the Prime Minister to select a cadre of five Secretaries of State who will be empowered to exercise the Prime Minister's power to provide for the authorisation of targeted equipment interference (TEI) warrants which would provide for access to the communications of a member of a relevant legislature, where the Prime Minister is incapacitated or unable to access secure communications. This change also applies to targeted interception warrants, and the Interception of Communications Code has also been updated accordingly.

b) Adding a deputy director general of the National Crime Agency to the list of law enforcement chiefs who are able to delegate the function of considering TEI applications under section 106 IPA, to appropriate delegates (as described in the table in Part 1 of Schedule 6 to the IPA) in urgent cases.

c) Changing the processes associated with the removal of a subject from a TEI warrant which would have the effect of removing the requirement to notify the Secretary of State at the point of the removal of the subject.

d) Strengthening the safeguards for confidential journalistic materials in the bulk equipment interference regime, requiring prior independent authorisation by the IPC before criteria (for finding confidential journalistic material or identifying a journalistic source) can be used for selection for examination.

Interception of Communications

5.9 This Code provides guidance on the procedures that must be followed when interception of communications and/or the obtaining of secondary data takes place under Part 2 or Chapter 1 of Part 6 IPA.

5.10 In addition to the changes already mentioned, this has been updated to reflect minor changes to Schedule 3 to the IPA which allow parole commissioners for Northern Ireland the opportunity to review intercepted materials in certain circumstances and enable coroners and legal advisors conducting inquests and inquiries into deaths in both Northern Ireland and Scotland to access intercepted materials.

5.11 The instrument also brings into force the following three Codes:

Bulk Personal Datasets: Low or no reasonable expectation of privacy (Part 7A)

5.12 This Code relates to a new regime brought about by the Investigatory Powers (Amendment) Act 2024. It provides guidance on the procedures that must be followed when the Security Service, the Secret Intelligence Service and the Government Communications Headquarters wish to exercise the powers in Part 7A IPA to retain, or to retain and examine, BPDs that have a low or no reasonable expectation of privacy.

Third Party Bulk Personal Datasets (Part 7B)

5.13 This Code also relates to a new regime brought about by the Investigatory Powers (Amendment) Act 2024. It provides guidance on the procedures that must be followed before third party BPDs can be accessed and examined by the Security Service, the Secret Intelligence Service and the Government Communications Headquarters under Part 7B IPA.

Notices regime

5.14 This Code relates to the powers and duties conferred or imposed under Part 4, section 249 and sections 252 to 258B IPA. The Code sets out further detail on the circumstances in which a Data Retention, Technical Capability, National Security, or Notification Notice can be given; the process that must be followed before a notice can be given; the obligations that may be imposed by the giving of a notice and the ensuing right of review; and oversight of the use of notices.

Notices Regime

5.15 The Investigatory Powers (Amendment) Act 2024 made provision for a new type of notice: a Notification Notice. Notification Notices enable the Secretary of State, where it is considered necessary and proportionate, to require a telecommunications or postal operator to notify them of "relevant changes" that the operator is intending to make (i.e., changes which would impact their ability to assist with warrants and authorisations under the IPA). This will provide the Secretary of State, and by extension operational partners, with time to understand the potential impact of any changes. This instrument includes the following provisions, which are necessary to operationalise Notification Notices:

a) Providing that a Notification Notice may not be given to an operator who does not provide, or intend to provide, a service to more than 10,000 customers.

b) Providing detail on what constitutes a "relevant change".

c) Setting out the process by which operators can notify the Secretary of State of a "relevant change".

5.16 Additionally, the Investigatory Powers (Amendment) Act 2024 made changes to the review process for Data Retention Notices, Technical Capability Notices, and National Security Notices. When a notice is formally given to an operator, the operator has the statutory right to refer the notice – or any part of it – to the Secretary of State for review. The 2024 Act made provision for the timelines in which the review must take place to be laid out in regulations. This instrument amends the Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018 to set out those timelines, specifying the duration of the "review period" and the "relevant period", and providing further detail on the circumstances under which either period may be extended. This timeline is necessary to provide operators the certainty they require regarding the length a review of a notice can last, and therefore how long the status quo must be maintained.

5.17 Finally, this instrument amends the Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018 to increase the resilience of the Technical Advisory Board (TAB). The instrument removes the maximum cap on TAB membership to allow more than 15 members to be appointed. The instrument also alters the quorum requirements. The minimum quorum requirement will remain at seven with a 3:3:1 representation ratio – three members from industry, three from government, and one independent member – but now when the TAB is comprised of more than seven members, the requirement for an equal number of operator and public authority representatives remains. There is also a requirement that there must be at least one (but no greater than three) independent members.

What was the previous policy, how is this different?

Codes of Practice

5.18 The five revised Codes replace existing Codes. As well as including clarificatory updates and changes to ensure consistency across the Codes, these have been revised

to reflect various changes made by the Investigatory Powers (Amendment) Act 2024, as outlined above.

5.19 The new Codes on Part 7A (**Bulk Personal Datasets: Low or no reasonable expectation of privacy**) and Part 7B (**Third Party Bulk Personal Datasets**) relate to new regimes introduced by the Investigatory Powers (Amendment) Act 2024. Prior to the introduction of the 2024 Act any authorisations for BPDs with a low or no expectation of privacy would have had to go through the authorisation process under Part 7 IPA. The changes meant that such BPDs now have a distinct and less onerous set of safeguards, enabling the intelligence agencies to make more effective and efficient use of datasets such as online encyclopaedias and content from established news media. There was previously no specific authorisation process for third-party BPDs, so the new Part 7B regime draws on Part 7 IPA and incorporates statutory safeguards, including making provision for independent judicial oversight by the IPC.

5.20 The new Code on the **Notices regime** consolidates guidance that existed across various existing Codes (such as the Communications Data Code) into one place. It includes further updates to reflect changes made by the Investigatory Powers (Amendment) Act 2024, including a new section on Notification Notices.

Notices Regime

5.21 **Notification Notices** – The provisions on Notification Notices relate to a new form of notice, introduced by the Investigatory Powers (Amendment) Act 2024. The notification requirements are similar to those for other, pre-existing, notices, such as Technical Capability Notices.

5.22 **The TAB** - This instrument amends the Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018, which set out that the TAB must consist of between 13 and 15 members, to remove the upper limit on membership. The instrument also changes the requirements around the TAB's quorum. Taken with the requirement for the TAB membership to be 13 at a minimum, this means the TAB cannot currently consider concurrent reviews unless more than one independent member is appointed. This instrument maintains this ratio as the minimum requirement for quorum, but also introduces a broader requirement that quorum must be balanced. This will increase the resilience of the TAB and ensure the appropriate expertise is available.

5.23 **Notice review period** - The Investigatory Powers (Amendment) Act 2024 made provision to set out in regulations the review timelines of Data Retention Notices, Technical Capability Notices, and National Security Notices. Previously, no such statutory timeline existed and a notice review could, in theory, continue indefinitely.

6. Legislative and Legal Context

How has the law changed?

6.1 Paragraph 1 of Schedule 7 to the IPA requires the Secretary of State to issue one or more Codes about the exercise of functions conferred by virtue of the IPA. Before issuing or revising a Code, the Secretary of State is required to prepare and publish a draft and consider any representations. In particular, the Secretary of State must consult the IPC and, in the case of a Code relating to the exercise of functions conferred by virtue of Part 4 (retention of Communications Data), the Information Commissioner.

6.2 In accordance with the procedural requirements in Schedule 7 to the IPA, the Investigatory Powers (Codes of Practice) Regulations 2018 brought the following

Codes into force: Bulk Acquisition of Communications Data, Equipment Interference, Interception of Communications, National Security Notices, and Intelligence Services' Retention and Use of Bulk Personal Datasets. The Data Retention and Acquisition Regulations 2018 brought into force the Communications Data Code, while the Investigatory Powers (Covert Human Intelligence Sources and Interception: Codes of Practice) Regulations 2022 brought into force a revised version of the Interception of Communications Code.

6.3 This instrument brings into force revised versions of the following Codes, to reflect changes made by the Investigatory Powers (Amendment) Act 2024 and other clarificatory amendments: Bulk Acquisition of Communications Data, Intelligence Services' Retention and Use of Bulk Personal Datasets, Communications Data, Equipment Interference, and Interception of Communications.

6.4 This instrument also brings into force three new Codes: Bulk Personal Datasets: Low or no reasonable expectation of privacy, Notices Regime, and Third Party Bulk Personal Datasets. The Notices Regime Code brings together guidance from across several existing Codes in relation to Notices, with further additions and amendments to reflect changes made by the Investigatory Powers (Amendment) Act 2024. The Codes on Bulk Personal Datasets: Low or no reasonable expectation of privacy and Third Party Bulk Personal Datasets relate to new regimes introduced by Part 7A and Part 7B of the Investigatory Powers (Amendment) Act 2024 respectively.

6.5 A Code issued under the IPA has statutory force and individuals exercising powers and performing duties to which the Code relates must have regard to it. The Codes are admissible in evidence in criminal and civil proceedings and may be taken into account by any court, tribunal or supervisory authority when determining a question arising in connection with those powers and duties.

6.6 The existing Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018 set out the period and circumstances in which a person given a notice under the IPA can refer that notice to the Secretary of State for review, as well as membership requirements for the TAB. This instrument amends the Investigatory Powers (Review of Notices and Technical Advisory Board) Regulations 2018 to increase the resilience of the TAB and to reflect changes to the notice review process made by the Investigatory Powers (Amendment) Act 2024. Finally, this instrument introduces new regulations to specify what constitutes a "relevant change" for the purposes of new section 258A IPA, regarding Notification Notices.

Why was this approach taken to change the law?

6.7 Paragraph 4 of Schedule 7 to the IPA sets out the procedural requirements which must be followed by the Secretary of State in making a Code. In particular, a Code comes into force in accordance with regulations made by the Secretary of State, and a statutory instrument containing such regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. Paragraph 5 of Schedule 7 to the IPA allows the Secretary of State to make revisions to a Code, and sets out the procedural requirements for doing so, which reflect those for making a new Code. This instrument fulfils these procedural requirements.

6.8 This instrument also gives effect to several regulation-making powers in the IPA. Section 90(5A and 11A) IPA and section 257(4A and 10A) IPA contain powers which enables the Secretary of State to set out in regulations the timeline for the review of National Security Notices, Technical Capability Notices, and Data Retention Notices.

Section 258A(2) IPA allows the Secretary of State to define in regulations what constitutes a 'relevant change' in the context of Notification Notices. Section 245 IPA contains provision for the Secretary of State to make regulations regarding the membership and quorum of the TAB.

7. Consultation

Summary of consultation outcome and methodology

7.1 From 14 October 2024 to 6 January 2025, the Home Office ran a 12-week public consultation on the new and revised Codes, which are brought into force by this instrument, and a draft version of the regulations. We received a total of 19 responses from a range of stakeholders, including interest groups, charities, public authorities, think tanks, technology companies, trade associations and members of the public.

7.2 Responses to the consultation primarily focused on the Codes relating to the Notices regime, Communications Data, and Bulk Personal Datasets with a low or no expectation of privacy. There were only limited references to the draft Codes relating to Equipment Interference or Interception of Communications. The responses included various suggestions for amendments to the draft Codes and regulations to provide further clarity to stakeholders. Several responses suggested changes to the IPA itself.

7.3 The Government's response to the consultation was published ahead of this instrument being laid before Parliament.[1] Several changes were made as a result, including: stylistic changes; further clarity on processes, such as the duty of a Telecommunications Operator to assist with equipment interference warrants; and retaining the current minimum membership requirement of thirteen TAB members.

8. Applicable Guidance

8.1 In accordance with Paragraph 4(5) of Schedule 7 to the IPA, the Codes provide operational guidance for public authorities to have regard to when exercising functions to which they relate.

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 the impact was covered in the Impact Assessment for the Investigatory Powers (Amendment) Act 2024.[2]

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because additional resource costs to business incurred through changes to the Notices regime will continue to be reimbursed by the government where requested by the company, as per the IPA. The cost of this increased resource cannot be estimated due to the current level of resource being allocated to IPA related activities being unknown, and classified in the case of some intercepting agencies.

[1] https://www.gov.uk/government/consultations/investigatory-powers-amendment-act-2024-codes-of-practice-and-notices-regulations
[2] https://publications.parliament.uk/pa/bills/cbill/58-04/0157/IA.pdf

9.3 Changes to the Notices regime mean businesses will also incur negligible familiarisation costs; however, due to analytical uncertainty and confidentiality, they cannot be accurately estimated.

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the majority of the provisions in the Investigatory Powers (Amendment) Act 2024 have already commenced, and any familiarisation costs to public authorities exercising powers under the IPA in ensuring compliance with the updated legislative framework will have begun to incur prior to, or at the point of, commencement.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Government will keep the Codes and provisions related to the notices regime under regular review to ensure they remain fit for purpose. Where appropriate, changes will be made to the Codes in accordance with Part 5 of Schedule 7 to the IPA, and changes will be made to the provisions relating to the notices regime using the various regulation making powers in the IPA.

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 for Security has made the following statement regarding Human Rights:

"In my view the provisions of the Investigatory Powers (Codes of Practice, Review of Notices and Technical Advisory Board) 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").