EXPLANATORY MEMORANDUM TO

THE INVESTIGATORY POWERS (COMMUNICATIONS DATA) (RELEVANT PUBLIC AUTHORITIES AND DESIGNATED SENIOR OFFICERS) 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 The Communications Data Policy Team at the Home Office telephone: 0300 1056004 or email: IPUCommunicationsData@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 amends the list of public authorities who can use acquisition powers to obtain Communications Data (CD) during criminal and national security investigations. Specifically, it adds seven authorities, removes two, and amends one authority's existing designation to schedule 4 Investigatory Powers Act 2016 (IPA).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is the United Kingdom.

4.3 The territorial application of this instrument is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The IPA provides the framework for the use and oversight of most investigatory powers by the intelligence services, law enforcement, and other public authorities.

5.2 CD provides information on who, where, when and how a communication occurs, without revealing the content of the communication (such as what was written or said). This information plays a vital role in criminal and national security investigations, often serving as the primary means to identify offenders. CD is particularly crucial in cases of offences which take place online such as fraud or child sexual exploitation.

5.3 Schedule 4 to the IPA sets out the public authorities that can obtain CD under Part 3 of the IPA, the type of CD that can be obtained and who may authorise the obtaining of CD internally in an urgent scenario (or, for the intelligence agencies, where the purpose of obtaining the data is in the interests of national security or the economic wellbeing of the UK).

5.4 As technology (and society's usage of technology) changes it is important that we adapt and equip relevant public authorities with the capability to prevent criminals from exploiting technology features, hiding their identity, evading detection, and putting the public at risk.

5.5 The Home Office reviewed Schedule 4 as part of the wider process of updating the IPA through the Investigatory Powers (Amendment) Act 2024. This instrument ensures that Schedule 4 remains up to date, so that public authorities are only able to acquire CD where it is necessary and proportionate to do so. Public authorities currently on Schedule 4 who have not used their power to acquire CD for five years or more were subject to review by the Home Office.

5.6 Seven public authorities are to be added to Schedule 4 enabling them to fulfil their statutory functions and obligations, including tackling and preventing fraud which is increasingly moving more online and where having access to CD for investigations would provide better outcomes.

5.7 The public authorities being added to Schedule 4 are:

a) "The Intellectual Property Office ("IPO") an executive agency, sponsored by DSIT. Section 62(2) of the Patents and Designs Act 1907 (c. 29) provides that the Patent Office, which is now commonly referred to as the IPO, is subject to the oversight of the Comptroller-General of Patents, Designs and Trade Marks. The Comptroller is a statutory office holder under section 63 of that Act."

b) "The Driver and Vehicle Standards Agency an executive agency, sponsored by the Department for Transport."

c) "The Security Industry Authority an executive non-departmental public body sponsored by the Home Office."

d) "The Velindre NHS Trust established as an NHS Trust by S.I. 1993/2838, which has been amended by S.I. 2012/1262, 2017/912, 2018/887 and 2021/232. The Velindre NHS Trust hosts additional organisations, one of which includes Counter Fraud Services Wales."

e) "The South East Coast Ambulance Service authorised as an NHS Foundation Trust under section 35 of the National Health Service Act 2006 (c. 41)."

f) "The North West Ambulance Service established as an NHS Trust by S.I. 2006/1622."

g) "The West Midlands Ambulance Service authorised as an NHS Foundation Trust under section 35 of the National Health Service Act 2006 (c. 41)."

h) "The East Midlands Ambulance Service established as an NHS Trust by S.I. 2006/1620."

5.8 Following their addition to Schedule 4 the seven public authorities will be able to apply for an independently-approved authorisation that, if granted, can be used to compel telecommunications and postal operators to disclose CD for the purposes set out within their designation in Schedule 4.

5.9 The seven public authorities being added to Schedule 4 will not be given the power to internally authorise the acquisition of CD. As such, all CD requests made by the seven public authorities will be subject to prior independent authorisation from the Investigatory Powers Commissioners' Office (IPCO), acting on behalf of the Investigatory Powers Commissioner (IPC). Given this, they do not require a Designated Senior Officer (DSO), whose purpose is to authorise internal applications, and so column 3 of the Schedule for these public authorities is blank.

5.10 The public authorities to be removed from Schedule 4 are:

a) Welsh Ambulance Services National Health Service Trust

b) Scottish Ambulance Service Board

c) 'An ambulance trust in England'

5.11 'An ambulance trust in England' was defined as including ten ambulance services in England. Six of these have confirmed they do not require the CD powers and can be removed. The remaining four English ambulance trust services (West Midlands Ambulance Service, South East Coast Ambulance Service, North West Ambulance Service, and East Midlands Ambulance Service) will remain on Schedule 4 and retain their CD acquisition powers.

5.12 'An ambulance trust in England' has therefore been removed from the Schedule and replaced with four individual designations for the four English ambulance services who will retain their CD powers.

5.13 An administrative change has also been made to the Insolvency Service's designation in Schedule 4 in order to ensure consistency with other similar authorities. Following machinery of government changes in February 2023, the Insolvency Service will be designated under the DBT.

What was the previous policy, how is this different?

5.14 There is no change to the policy.

5.15 This instrument adds seven new public authorities to the list in Schedule 4 giving them the power to compel a telecommunications or postal operator to disclose CD using an IPA Part 3 authorisation. This will enable these public authorities to acquire CD to progress investigations fulfilling their statutory functions and obligations, in line with the statutory purposes available under the IPA.

5.16 Removing the ambulance services outlined in paragraphs 5.10 – 5.12 from Schedule 4 means they will no longer have the power to compel the disclosure of CD using an IPA Part 3 authorisation. This change ensures the Schedule remains up to date.

5.17 The Insolvency Service were previously listed in column 1 of the Schedule but following machinery of government changes, will be listed under DBT's designation in line with other similar bodies' designations on the Schedule. This is an administrative change and does not change how the Insolvency Service acquire CD using the IPA.

6. Legislative and Legal Context

How has the law changed?

6.1 Seven new public authorities, once added to Schedule 4, will be able to acquire CD using Part 3 of the IPA but only under section 60A which requires them to seek prior independent authorisation from the IPC. Three public authorities (Welsh Ambulance Services National Health Service Trust, Scottish Ambulance Service Board, and 'An

ambulance service in England' are being removed from the Schedule. 'An ambulance service in England' designation is being replaced with four individual English ambulance service designations. This means six ambulance services that were designated under 'An ambulance service in England' (East of England Ambulance Service, London Ambulance Service, North East Ambulance Service, South Central Ambulance Service, South Western Ambulance Service, and Yorkshire Ambulance Service) will no longer be able to acquire CD using Part 3 of the IPA. The four ambulance services that are now included in the Schedule instead can continue to use their CD powers.

6.2 The seven new public authorities are the only public authorities in Schedule 4 that do not have the power to internally authorise the acquisition of CD in urgent circumstances and therefore do not have a DSO listed in the Schedule.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes, other than via primary legislation. To add or remove public authorities on Schedule 4, it is necessary to bring forward secondary legislation, provided for by a delegated power in section 71 of the IPA.

7. Consultation

Summary of consultation outcome and methodology

7.1 Section 72(2) of the IPA requires the Secretary of State to consult the Investigatory Powers Commissioner (IPC) before making amendments to Schedule 4.

7.2 The statutory 12-week consultation with IPCO began on the 24 October 2024, ending on the 17 January 2025. This was not a public consultation and therefore the responses will not be published.

7.3 Following discussions to determine the necessity of the public authorities having CD powers, each of the seven public authorities submitted a business case to the Home Office which was shared with IPCO as part of the consultation process.

7.4 Upon conclusion of the consultation the IPC confirmed he was content with the addition of all seven of the public authorities. The IPC also agreed that the seven public authorities' cases did not require them to have internal authorisation powers.

7.5 In his response the IPC outlined the addition of seven public authorities to Schedule 4 will increase demand on IPCO's resources. He also noted given the public authorities being removed had not used their powers for five years or more, this would not decrease the demand. The Home Office recognises this and will continue to engage with IPCO regarding resourcing.

7.6 The IPC also confirmed he was content with the removal of the public authorities and the amendment to the Insolvency Service's designation.

8. Applicable Guidance

8.1 The Communications Data Code of Practice provides guidance on the exercise and functions under the IPA and is available on gov.uk.

8.2 Section 268(3)(b) of the IPA requires the Secretary of State to lay before Parliament a document which explains the regulations. This additional regulatory explanation document is also being published alongside this explanatory memorandum.

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 no significant impact on the private, voluntary or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on charities or voluntary bodies because the legislation does not apply to activities undertaken by charities or voluntary bodies. There is minimal impact on specific businesses as outlined below.

9.3 There may be greater resource costs for telecommunications operators (TOs), given that they may have to dedicate additional resource to comply with an increase in relevant requests. However, we expect the additional requests to be fairly minimal. TOs are also reimbursed by the Government, as provided for by the IPA 2016, and requesting public authorities have to pay per request. Therefore, any additional resource cost is ultimately borne by government using taxpayers' money and the public authorities.

9.4 The seven additional public authorities also plan to use the National Anti-Fraud Network's (NAFN) CD Single Point of Contact Services (CD SPoC). NAFN is an effective point of contact for all local authorities and other public authorities enabling members to acquire data, intelligence and knowledge to support investigations in the UK. The Home Office has supported NAFN in establishing a national, online and accredited CD SPoC Service. There will be a financial impact on NAFN due to increased demand on NAFN CD SPoC services. The Home Office will continue to engage with, and support NAFN to be able to deliver its services.

9.5 The legislation does not impact small or micro businesses.

9.6 There is no significant impact on the public sector as this legislation gives seven public sector bodies CD powers to enable them to, for example, prevent and detect fraud, and therefore ensure taxpayers' money is used for its intended purpose.

9.7 There will be a financial impact to the public authorities that are added to Schedule 4 and the individual public authority's government sponsor/department to meet the resourcing and set up costs. This has been communicated to the seven public authorities and they will manage this internally within their budget decisions. The public authorities are aware they are responsible for ensuring that they have the necessary resourcing to proceed and to be compliant with the investigatory powers regime.

9.8 There will also be implications for IPCO through increased inspections and authorisations. This discussion formed part of the 12-week formal consultation period and was included within the IPC's consultation response.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through the oversight of the IPC, the regulator of the IPA, who will ensure the public authorities on Schedule 4 only acquire CD where it is necessary and proportionate to do so. This oversight is delivered in practice by IPCO, who ensure any deviations from the legislation are identified early and addressed appropriately.

10.2 The instrument does not include a statutory review clause; however the Home Office will continue to keep under review the use of CD powers to ensure the designated public authorities on Schedule 4 remain up to date and CD is only acquired by public authorities where it is necessary and proportionate to do so.

10.3 Given the increased demand on IPCO resourcing in terms of the authorisation process and inspection regime, the Home Office will work with IPCO to monitor the impact.

10.4 The addition of seven public authorities will also increase the demand for CD from telecommunication and postal operators which the Home Office will keep under continuous review.

10.5 The public authorities added to Schedule 4 will also be supported by the Home Office in ensuring their compliance with the IPA.

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 Security Minister has made the following statement regarding Human Rights:

"In my view the provisions of the Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) 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").