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 Schedule 4 to the Investigatory Powers Act 2016 (IPA) by adding eleven new entries, updating one existing entry, removing the entry for one group of public authorities, and removing the entries of two public authorities currently on the Schedule who have not used their Communications Data (CD) acquisition powers for at least five years.

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 purposes for this, the type of CD that can be obtained and who may authorise the obtaining of CD internally in an urgent scenario.

5.4 As technology (and society's usage of technology) changes it is important that we adapt and equip 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 review included the public authorities currently on Schedule 4 who have not used their power to acquire CD for five years or more, as well as those public authorities who were seeking access to this power 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.

5.6 This instrument results from that review and ensures that Schedule 4 only contains the public authorities that have a need to acquire CD.

5.7 This instrument adds eleven new entries to Schedule 4. These entries relate to:

5.7.1 The Intellectual Property Office (IPO): an executive agency, sponsored by the Department for Science, Innovation and Technology. Section 62(2) of the Patents and Designs Act 1907 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.

5.7.2 The Driver and Vehicle Standards Agency: an executive agency, sponsored by the Department for Transport.

5.7.3 The Security Industry Authority: an executive non-departmental public body sponsored by the Home Office.

5.7.4 Counter Fraud Services Wales: an organisation hosted by the Velindre NHS Trust. The Velindre NHS Trust is an NHS Trust established by the Velindre National Health Service Trust (Establishment) Order 1993.

5.7.5 The Integrated Corporate Services Counter Fraud Expert Services Team situated within the Department for Business and Trade.

5.7.6 The Integrated Corporate Services Counter Fraud Expert Services Team situated within the Department for Energy Security and Net Zero.

5.7.7 The Counter Fraud and Investigation Team situated within the Department for Environment, Food and Rural Affairs.

5.7.8 The South East Coast Ambulance Service: authorised as an NHS Foundation Trust under section 35 of the National Health Service Act 2006.

5.7.9 The North West Ambulance Service: established as an NHS Trust by the North West Ambulance Service National Health Service Trust (Establishment) Order 2006.

5.7.10 The West Midlands Ambulance Service: authorised as an NHS Foundation Trust under section 35 of the National Health Service Act 2006.

5.7.11 The East Midlands Ambulance Service: established as an NHS Trust by the East Midlands Ambulance Service National Health Service Trust (Establishment) Order 2006.

5.8 The seven entries referred to in 5.7.1 through 5.7.7 are new entries. They will not be given the power to internally authorise the acquisition of CD. However, they have been given the power 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. As such, all CD requests made by these seven will be subject to prior independent authorisation from the Investigatory Powers Commissioner's 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 columns 3 through 6 of the table for these public authorities is blank

5.9 The remaining four entries, referred to in 5.7.8 through 5.7.11, are English ambulance trust services (West Midlands Ambulance Service, South East Coast Ambulance Service, North West Ambulance Service, and East Midlands Ambulance Service). They were previously designated under the definition of 'an ambulance trust in England', which included a total of ten ambulance services in England. This definition has been removed and replaced with individual entries as six of these ambulance services have confirmed they no longer require the CD powers. The remaining English ambulance trust services will retain their CD powers, which includes the ability to authorise internal applications.

5.10 Two other entries have agreed to their removal from Schedule 4:

a) Welsh Ambulance Services National Health Service Trust, and

b) Scottish Ambulance Service Board.

5.11 In addition, 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. This means the Insolvency Service is now designated as part of the Department for Business and Trade.

What was the previous policy, how is this different?

5.12 There is no change to the policy.

5.13 This instrument adds seven new public authorities to Schedule 4, giving them the power to compel a telecommunications or postal operator to disclose CD using an authorisation under Part 3 of the IPA. 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.

5.14 Removing the six ambulance services outlined in paragraphs 5.8 – 5.9 from Schedule 4 means they will no longer have the power to compel the disclosure of CD using an authorisation under Part 3 of the IPA.

5.15 The Insolvency Service was previously designated as a relevant public authority in column 1 of the Schedule. To reflect machinery of government changes, it will be designated under DBT's designation in line with other similar authorities' designations on the Schedule. This is an administrative change and does not change how the Insolvency Service acquires CD using the IPA.

6. Legislative and Legal Context

How has the law changed?

6.1 Seven new entries, 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 entries (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 entries 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 recorded 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 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 the IPC as part of the consultation process.

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

7.4 Upon conclusion of the consultation the IPC confirmed he was content with the addition of the seven new entries to the Schedule. The IPC also agreed that the seven public authorities' cases did not require them to have internal authorisation powers. The IPC also confirmed he was content with the removal of the public authorities and the amendment to the Insolvency Service's designation.

7.5 In his response the IPC outlined that the addition of seven entries to Schedule 4 will increase demand on the Investigatory Powers Commissioner's Office's resources. He also noted that although public authorities were being removed, the fact they had not used their powers for five years or more meant there would be no decrease in demand. The Home Office recognises this and will continue to engage with the IPC regarding resourcing. 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 a greater resource burden 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 number of additional requests to be fairly minimal. TOs are also reimbursed by the Secretary of State for costs incurred in complying with requests under the IPA, as provided for by section 249 of the IPA. Therefore, any additional resource cost is ultimately borne by taxpayers' money as part of the budget allocated to public authorities making any requests.

9.4 The seven additional public authorities plan to use the National Anti-Fraud Network's (NAFN) CD Single Point of Contact Services (CD SPoC). It is the responsibility of the public authority to either maintain their own accredited CD SPoC or outsource to the NAFN's CD SPoC service to ensure compliance with the investigatory powers CD acquisition regime. The Home Office has supported NAFN in establishing a national, online and accredited CD SPoC service. There will be a financial impact to NAFN's resources due to increased demand on NAFN CD SPoC services by the seven public authorities. Public authorities that use NAFN's CD SPoC service pay for this service through an annual subscription. The seven additional public authorities have confirmed this and included this expenditure within their budget. 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. This legislation gives seven public authorities 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, where applicable, any public authority's government sponsor/department to meet the resourcing and set up costs. The public authorities have acknowledged this and 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 permit use of these CD powers, including the reimbursement of TOs.

9.8 There will also be implications for IPCO through increased requirements for 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 IPC who provides oversight of the IPA. The IPC 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 the seven new entries will also increase the demand for CD from telecommunication operators which is included under section 249 of the IPA, as detailed at paragraph 9.3 above.

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").