EXPLANATORY MEMORANDUM TO

THE POLICE, CRIME, SENTENCING AND COURTS ACT 2022 (EXTRACTION OF INFORMATION FROM ELECTRONIC DEVICES) (AMENDMENT OF SCHEDULE 3) REGULATIONS 2023

2023 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. Purpose of the instrument

2.1 This instrument amends Schedule 3 of the Police, Crime, Sentencing and Courts Act 2022 ("the Act") which lists the authorised persons able to exercise the extraction of information powers contained in Part 2, Chapter 3 of that Act. The amendments move the Royal Military Police, the Royal Navy Police, and the Royal Air Force Police from Part 2 to Part 1 of Schedule 3, so that they can exercise the powers for all the purposes within sections 37 (investigations of crime etc.) and 41 (investigations of death) of the Act, rather than solely for the purposes in section 37.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt. Hon Chris Philp MP, Minister of State for Crime, Policing and Fire, has made the following statement regarding Human Rights:

"In my view the provisions of The Police, Crime, Sentencing and Courts Act 2022 (Extraction of information from electronic devices) (Amendment of Schedule 3) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Chapter 2 of Part 3 of the Act provides a clear statutory basis for police and other authorised persons to extract information from electronic devices for the specific purposes set out under sections 37 and 41 of Part 2, Chapter 3 of the Act. The power in section 37 allows authorities investigating a crime or safeguarding the public to extract information from electronic devices with the agreement of the user. The power in section 41 allows authorities to extract information from a device where the user has died, for the purpose of an investigation or inquest into the person's death.

6.2 To exercise the powers for all the purposes within sections 37 or 41 of the Act, an authorised person must be listed in Part 1 of Schedule 3.

6.3 Section 44(4) of the Act enables the Secretary of State to amend the list of authorised persons in Schedule 3 by regulations, including by adding or removing an authorised person to or from the list.

7. Policy background

What is being done and why?

7.1 This instrument is being made to amend Schedule 3 of the Act to enable the Royal Military Police, the Royal Navy Police, and the Royal Air Force Police to exercise the extraction of information powers for all the purposes within sections 37 and 41 of the Act.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The extraction of information powers under section 37 of the Act may be exercised for the purpose of preventing, detecting, investigating, or prosecuting crime, helping to locate a missing person, or protecting a child or an at-risk adult from neglect or physical, mental, or emotional harm. The extraction of information powers under section 41 of the Act may be exercised for the purpose of an investigation or inquest into a person's death.

7.3 Schedule 3 of the Act provides a list of authorised persons who can exercise these powers. Schedule 3 is split into three parts to clearly set out which bodies can exercise the powers for which purpose(s). Part 1 lists those bodies who can exercise the extraction of information powers for all the purposes listed under sections 37 or 41. Part 2 lists the bodies who can exercise the powers for the purposes listed under section 37 only. Part 3 lists the bodies who can only exercise the powers for the specific purpose of preventing, detecting, investigating, or prosecuting crime.

Why is it being changed?

7.4 The Royal Military Police, the Royal Navy Police and the Royal Air Force Police are listed under Part 2 of Schedule 3 of the Act which enables them to exercise the extraction of information powers for all the purposes set out under section 37 of the Act. However, they also require the power to extract information from electronic devices for the purposes set out under section 41. This is because they conduct investigations on behalf of a coroner or Lord Advocate when a member of the armed forces or Royal Military Police, Royal Navy Police or Royal Air Force Police has died, usually in action or in training, outside of the UK. They can also conduct investigations on behalf of the coroner or Lord Advocate for civilians who do not fall under service law but are subject to service discipline, such as the family members of the armed forces or these police forces.

7.5 As such, this instrument is being made to remove those police forces from Part 2 and add them to Part 1 of Schedule 3, to enable them to exercise the powers for all the purposes listed under sections 37 or section 41 of the Act.

What will it now do?

7.6 This amendment will ensure the Royal Military Police, the Royal Navy Police and the Royal Air Force Police are able to exercise the extraction of information powers for all the purposes they require (for the purpose of investigating crime, safeguarding others, investigating or for any inquest into a person's death).

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This statutory instrument amends Schedule 3 to the Act but does not amend another statutory instrument. It does not require any consolidation of legislation.

10. Consultation outcome

10.1 A formal consultation has not taken place regarding this instrument because the Royal Military Police, the Royal Navy Police and Royal Air Force Police are already named in Part 2 of Schedule 3 and no concerns were raised regarding their inclusion in the list of authorised persons during parliamentary passage of the Act. The extension of their powers to investigations into deaths, by this amendment, is not expected to receive any significant interest or result in any concerns being raised and so a consultation has not been conducted.

10.2 Informal consultation has taken place with the Ministry of Defence, on behalf of the Royal Military Police, Royal Navy Police, and Royal Air Force Police, to make them aware that we are pursuing these changes to Schedule 3 of the Act and to ensure their views for why this amendment is necessary are captured.

10.3 Consultation has not taken place with the devolved administrations as the amendments made by the instrument do not relate to devolved matters, and so the statutory obligation to consult the devolved administrations does not apply. However, we have written to Keith Brown MSP, the Scottish Government's Cabinet Secretary for Justice, and the Department of Justice (DoJ) in Northern Ireland to inform them of the change being made.

11. Guidance

11.1 Guidance about this amendment is not being made as the change is minor and the Royal Military Police, the Royal Navy Police and the Royal Air Force Police are aware of the extent of the new powers they will have the ability to exercise. The existing Extraction of information from electronic devices: code of practice includes all of the relevant guidance they will need to be aware of and so new guidance relating to this change is not necessary.

11.2 The Extraction of information from electronic devices: code of practice will be updated at the next available opportunity to reflect that the Royal Military Police, the Royal Navy Police, and the Royal Air Force Police can exercise the extraction of information powers for the additional purpose of an investigation or inquest into the death of a person, as this contains a copy of the current version of Schedule 3 of the Act within one of its annexes. Other than this very minor change, no other amendments are required to be made to the code of practice.

12. Impact

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

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

12.3 A full Impact Assessment has not been prepared for this instrument as no, or no significant impact on the private or voluntary sectors, or community bodies is foreseen. No impact is expected because the change relates to amending the ability of the Royal Military Police, the Royal Navy Police, and the Royal Air Force Police to exercise the extraction of information powers for an additional purpose, rather than amending the extraction of information powers themselves.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to combine a review with the review date set out in the Impact Assessment for the whole Act which is set at November 2026.

14.2 This instrument does not make or amend regulatory provisions that relate to business activity. There are no plans to actively monitor or review this instrument, until the Act as a whole is reviewed in 2027 (5 years after the Act received Royal Assent). The list of authorised persons in Schedule 3 who can exercise the extraction powers within the Act, will be amended as and when required where the government considers it is appropriate to add, remove or modify references to authorised persons.

15. Contact

15.1 Nicola Kenny at the Home Office Telephone: 03000 727 538 or email: Nicola.Kenny1@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Alex MacDonald, Deputy Director for Identity Policy, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Chris Philp MP, Minister for Crime and Policing at the Home Office can confirm that this Explanatory Memorandum meets the required standard.