EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT RIGHTS ACT 2025 (INVESTIGATORY POWERS) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2026

2026 No. 351

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Kate Dearden, Minister for Employment Rights and Consumer Protection at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 James Stevens, Deputy Director for Employment Rights Enforcement, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Chris Rowland at the Department for Business and Trade can be contacted by email at the following address with any queries regarding the instrument: chris.rowland@businessandtrade.gov.uk. Alternatively, the department can be contacted by telephone: 020 7215 5000.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes consequential amendments to the Investigatory Powers Act 2016 ("the IPA") to ensure continuity of access to investigatory powers relating to the acquisition of communications data following the abolition of the Gangmasters and Labour Abuse Authority ("the GLAA").

4.2 The Employment Rights Act 2025 (“the Act”) transfers the statutory enforcement functions previously exercised by the GLAA to the Secretary of State for Business and Trade. Those functions are exercised operationally through the Fair Work Agency ("the FWA"), an executive agency of the Department for Business and Trade.

4.3 The instrument amends the table in Part 1 of Schedule 4 to the IPA so that investigatory powers previously exercisable in connection with GLAA functions continue to be exercisable by the Secretary of State for Business and Trade in connection with those transferred functions.

4.4 This instrument does not confer new investigatory powers, does not expand the purposes for which communications data may be obtained, and does not alter the safeguards, authorisation arrangements or oversight framework established by the IPA. The Regulations come into force on 7th April 2026.

Where does the legislation extend to, and apply?

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

4.6 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 Communications data consists of information about a communication, such as its origin, destination, date, time, duration and type, but not its content. Such data may be obtained from telecommunications operators where the statutory requirements of the IPA are met.

5.2 Communications data powers were previously available in connection with the exercise of GLAA enforcement functions. This instrument does not revisit the policy justification for those powers, which was settled by Parliament when conferring them in relation to those functions.

5.3 This instrument ensures that, following the transfer of functions, communications data powers continue to be exercisable by the Secretary of State for Business and Trade, through the Fair Work Agency, to the same extent and subject to the same safeguards as applied prior to the abolition of the GLAA.

What was the previous policy, how is this different?

5.4 The previous policy provided the GLAA with investigatory powers to acquire communications data under the IPA in connection with its statutory enforcement functions.

5.5 The Act abolishes the GLAA and transfers its statutory enforcement functions to the Secretary of State for Business and Trade. This instrument ensures continuity by transferring the associated communications data powers to the Secretary of State, who exercises these functions operationally through the Fair Work Agency.

5.6 This instrument does not result in any expansion of investigatory powers and does not alter the balance between public protection and individual privacy established by the IPA. It is purely consequential in nature, maintaining the existing regulatory framework while reflecting the organisational changes.

6. Legislative and Legal Context

How has the law changed?

6.1 The IPA establishes the statutory framework governing the acquisition of communications data by public authorities and provides for strict safeguards to ensure that any interference with privacy is necessary, proportionate, authorised and subject to independent oversight.

6.2 Schedule 4 to the IPA lists the public authorities that may obtain communications data for specified purposes.

6.3 Section 154 of the Employment Rights Act 2025 enables the Secretary of State to make consequential amendments to other enactments where necessary to give full effect to the transfer of functions.

6.4 This instrument amends Schedule 4 to the IPA to replace the GLAA entry with a reference to the Secretary of State for Business and Trade so far as it relates to the Fair Work Agency, ensuring that investigatory powers associated with the transferred functions continue to be available following the abolition of the GLAA.

Why was this approach taken to change the law?

6.5 Two legislative options were available to make these amendments to Schedule 4 of the Investigatory Powers Act 2016.

6.6 The first option would be to use section 71 of the IPA, which provides that the Secretary of State may by regulations modify Schedule 4. However, section 72 of the IPA establishes that such regulations would be subject to the super-affirmative procedure. Under section 268 of the IPA, this would require a 12-week consultation period with the Investigatory Powers Commissioner and affected public authorities, followed by laying of draft regulations before Parliament and a minimum 40-day period for parliamentary consideration, which Parliament may extend by a further 60 days.

6.7 The Act received Royal Assent on 18 December 2025. Given this timeline, following the super-affirmative procedure under section 71 would mean that regulations could not be made and brought into force before April 2026, when the Fair Work Agency becomes operational and the GLAA is abolished. This timing constraint would create a critical enforcement gap. The FWA would not be able to obtain communications data for the purposes of effectively enforcing the highest-risk areas of its remit - modern slavery and labour exploitation. This would prevent the Government from delivering on the implementation roadmap published in July 2025, which sets out the timeline for establishing a functioning FWA by April 2026. During parliamentary debates on the Bill, ministers committed to meeting the roadmap timelines, including "establishing the Fair Work Agency" by April 2026[1].

6.8 The second option, which has been adopted, is to use section 154 of the Act, which provides that the Secretary of State may by regulations make provision that is consequential on any provision made by the Act.

6.9 This approach is appropriate because the amendments are limited to those necessary to reflect the transfer of statutory enforcement functions from the GLAA to the Secretary of State and to preserve existing investigatory capability. The instrument does not designate a new public authority for the purposes of the IPA. It ensures continuity where investigatory powers are attached to functions that are transferred in full and exercised by the Secretary of State through an executive agency.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Investigatory Powers Commissioner was consulted in relation to the consequential amendments made by this instrument.

7.2 The consultation confirmed that the amendments are technical in nature and limited to ensuring continuity of existing powers following the transfer of functions.

[1] https://hansard.parliament.uk/Commons/2025-11-05/debates/026C712E-6977-42B8-9DE1-063A703DD338/EmploymentRightsBill#

8. Applicable Guidance

8.1 No new guidance is required as a result of this instrument. The IPA is supported by statutory codes of practice which provide transparent and detailed guidance on the exercise of investigatory powers. These existing codes continue to apply.

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 it makes no substantive policy changes and maintains existing regulatory standards. The creation of the Fair Work Agency and the transfer of enforcement functions from the Gangmasters and Labour Abuse Authority, Employment Agency Standards, and HMRC National Minimum Wage enforcement were comprehensively assessed in the Impact Assessment and Enactment Assessment prepared for the Employment Rights Act 2025[2].

9.2 The instrument is purely consequential in nature, ensuring the continuity of existing investigatory powers following an organisational transfer of functions. There are no new regulatory burdens or changes to the scope or application of communications data powers.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument maintains existing investigatory powers without any expansion or alteration to their scope or application.

9.4 The legislation applies to activities undertaken by small businesses but does not impose new regulatory burdens.

9.5 The legislation does not impact small or micro businesses differently than any other business size.

9.6 The impact on the public sector is limited to ensuring the continued exercise of existing investigatory powers by the Secretary of State through the Fair Work Agency. There are no additional costs or operational changes beyond the administrative transfer of functions already provided for by the Employment Rights Act 2025.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is provided through the existing oversight framework established by the IPA. Oversight of investigatory powers under the IPA is provided for by the IPA itself, including oversight by the Investigatory Powers Commissioner. The approach to monitoring this legislation is provided through the existing oversight framework established by the IPA. Section 234 of the IPA requires the Investigatory Powers Commissioner to make an annual report to the Prime Minister about the carrying out of the Commissioner's functions, including statistical information about the use of investigatory powers and information about their operation. The Prime Minister must lay this report before Parliament, ensuring parliamentary scrutiny of how communications data powers are being exercised.

[2] https://www.gov.uk/guidance/employment-rights-bill-impact-assessments

10.2 As the FWA will exercise communications data powers in connection with the transferred GLAA enforcement functions, the use of these powers will be captured in the annual reporting under section 234. This provides transparency about the frequency and manner in which these powers are used, enabling Parliament and the public to monitor whether the powers continue to be exercised proportionately and in accordance with the safeguards set out in the IPA.

10.3 The IPA also provides for comprehensive oversight by the Investigatory Powers Commissioner, whose remit includes reviewing the use of investigatory powers by public authorities to ensure compliance with the statutory framework and codes of practice.

10.4 This instrument does not include a statutory review clause as it makes purely consequential amendments that maintain existing regulatory standards without introducing new policy or regulatory burdens.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument is made under section 154 of the Employment Rights Act 2025, which permits consequential amendments to be made to primary legislation where necessary to give full effect to that Act.

11.2 The amendments made by this instrument are limited to those necessary to reflect the transfer of statutory enforcement functions from the GLAA to the Secretary of State for Business and Trade and to preserve existing investigatory capability under the IPA.

11.3 These Regulations come into force on 7th April 2026, aligned with the abolition of the GLAA and the commencement of the transferred enforcement functions. The instrument does not impose duties on persons that are significantly more onerous than before, nor does it alter the statutory tests governing the acquisition of communications data.

11.4 The instrument does not designate a new public authority for the purposes of the IPA. It ensures continuity where investigatory powers are attached to statutory functions that are transferred in full and exercised by the Secretary of State through an executive agency.

12. European Convention on Human Rights

12.1 Kate Dearden, Minister for Employment Rights and Consumer Protection has made the following statement regarding Human Rights: "In my view the provisions of the Employment Rights Act 2025 (Investigatory Powers) (Consequential Amendments) Regulations 2026 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").