EXPLANATORY MEMORANDUM TO

THE INVESTIGATORY POWERS (COMMUNICATIONS DATA) (RELEVANT PUBLIC AUTHORITIES AND DESIGNATED SENIOR OFFICERS) REGULATIONS 2020

2020 No. 1037

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument amends the table in Part 1 of Schedule 4 to the Investigatory Powers Act 2016 ('IPA') which lists relevant public authorities with powers to obtain communications data. This instrument updates that table to insert five additional public authorities which have demonstrated a necessary and proportionate requirement to obtain communications data. This instrument will also make minor amendments to the names of public authorities and the minimum office, rank or position that must be held by Designated Senior Officers to obtain communications data within public authorities.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Section 268(3) of the IPA provides that the Secretary of State must lay before Parliament draft regulations and a document which explains the regulations. The Home Office considers that it has met this requirement by laying before Parliament a memorandum setting out the purpose and effect of these Regulations.

3.2 These Regulations come into force on the day after the day on which they are made. These Regulations do not impose duties on people that are significantly more onerous than before. These Regulations do not give rise to a risk that they will come into force on a date earlier than appears to give those affected a reasonable chance to adapt to the changes required because the public authorities to which they relate have requested the changes and have been consulted in relation to them.

3.3 In accordance with paragraph 4.7.6 of Statutory Instrument Practice, the Home Office has consulted with the SI Registrar and considers that the free issue procedure does not need to apply to this instrument on the basis that the primary purpose of the Regulations is to introduce new provisions.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 The territorial application of this instrument includes Scotland and Northern Ireland.

3.5 The powers under which this instrument is made, and the legislation being amended, cover the entire United Kingdom (see section 272(4) of the IPA) and the territorial application of this instrument is not limited either the Acts or by the instrument.

4. Extent and Territorial Application

4.1 The extent of this instrument is the entire United Kingdom.

4.2 The territorial application of this instrument is the entire United Kingdom.

5. European Convention on Human Rights

5.1 The Rt. Hon. James Brokenshire MP 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 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The IPA makes clear the circumstances in which various investigatory powers may be used and the strict safeguards that apply ensuring that any interference with privacy is strictly necessary, proportionate, authorised, and accountable.

6.2 The IPA's legislative framework is supported by statutory codes of practice on each of the key investigatory powers, providing a transparent and comprehensive explanation of how powers are to be used by public authorities.

6.3 Section 71(1) of the IPA provides that the Secretary of State may by regulations modify Schedule 4. Such regulations may amend Schedule 4 to make changes to the public authorities that can obtain communications data.

6.4 Section 72(2) of the IPA provides that before making regulations the Secretary of State must consult the Investigatory Powers Commissioner and the public authority to which the modifications relate.

6.5 These regulations are being made to add five additional public authorities and to amend existing public authorities. All additions and amendments have been subject to a successful 12-week consultation period with the Investigatory Powers Commissioner and the public authorities to which the modifications relate as required by section 268(2)(b) of the IPA.

7. Policy background

What is being done and why?

7.1 Communications data is information about communications: the 'who', 'where', 'when', 'how' and 'with whom' of a communication but not what was written or said. It includes information such as the subscriber to a telephone service. Law enforcement, the security and intelligence agencies and other public authorities may obtain this data from Telecommunications Operators if the stringent safeguards in the IPA are met. As Part 4 of the IPA sets out, Telecommunications Operators may be legally obligated to retain certain types of data where it is necessary and proportionate to do so for up to 12 months.

7.2 Communications data powers are being granted to relevant public authorities in these regulations as they have demonstrated a necessary and proportionate requirement to use the powers to assist with investigations. The Environment Agency, for example, has a remit which encompasses over 400 different offences and they encounter 40,000 suspected offences each year. Waste crime costs the economy more than £600 million per year and the Environment Agency has seen a rapid escalation of organised crime in recent years. The November 2018 Serious and Organised Crime in the Waste Sector Report recommended "The Home Office should provide regulations under Part 3 of the Investigatory Powers Act 2016 to allow the Agency to acquire communications data to tackle serious and organised waste crime". The Environment Agency have submitted detailed case studies of their investigations to the Home Office where they believe communications data is required, as have each of the new relevant public authorities in these regulations. When deciding which authorities should be granted powers, the Government and the Investigatory Powers Commissioner consider numerous factors, including the statutory responsibilities of the authorities with access, the seriousness of the offences they investigate and the number of requests for data the body estimates they will make.

7.3 Minor updates are being made to the job titles of Designated Senior Officers within some existing public authorities to reflect organisational restructure, which do not reflect a change in seniority or rank. The Designated Senior Officer is a person holding a prescribed office or rank in a relevant public authority, who is responsible for authorising certain applications where a requirement for independent authorisation does not apply. The following public authorities are included within these regulations; the Pensions Regulator; NHS Counter Fraud Authority; Air Accidents Investigation Branch; Her Majesty's Prison and Probation Service; the Information Commissioner; Civil Nuclear Constabulary; Environment Agency; Insolvency Service UK; Department of Health and Social Care and the UK National Authority for Counter Eavesdropping.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

9.1 The Home Office has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 As per sections 72(2) and 268(2)(b) of the IPA, the Investigatory Powers Commissioner and the public authorities to which the modifications relate were consulted for a period of 12-weeks and this has been completed with nil returns from all parties.

11. Guidance

11.1 Guidance is not required for this instrument.

12. Impact

12.1 There is no, or no significant, impact anticipated on business, charities or voluntary bodies in the short term.

12.2 The impact on the public sector is limited to the public authorities who are included within these amendments.

12.3 An Impact Assessment has not been prepared for this instrument because this instrument relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is set out in Section 260 of the IPA which requires the Secretary of State to report on the operation of the Act, after a period of 5 years and 6 months from Royal Assent. The report must be published and laid before Parliament. In preparing the report, the Secretary of State must take into account any report on the operation of the Act produced by a Select Committee of either House.

14.2 The IPA provides for an Investigatory Powers Commissioner whose remit includes providing comprehensive oversight of the use of the powers contained within the Act.

15. Contact

15.1 Daniel Parker at the Home Office (telephone: 020 7035 4426 or email: COMMSDATA@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Jonathan Emmett, Deputy Director for the Investigatory Powers Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. James Brokenshire MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.