EXPLANATORY MEMORANDUM TO

THE POLICE, CRIME, SENTENCING AND COURTS ACT 2022 (COUNSELLING SERVICES) REGULATIONS 2025

2025 No. 1259

1. Introduction

1.1 This Explanatory Memorandum has been prepared by Home Office 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 Jess Phillips, Minister for Safeguarding and Violence Against Women and Girls at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

2.2 Alex J.G. Macdonald, Deputy Director for Data & Identity Directorate, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Alex J.G. Macdonald at the Home Office Data & Identity Directorate can be contacted by email at the following address with any queries regarding the instrument: alex.macdonald@homeoffice.gov.uk, or by phone at: 07917 215158.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument defines “counselling services” for the purposes of section 44A(4) of the Police, Crime Sentencing and Courts Act 2022 (as amended by the Victims and Prisoners Act 2024).

4.2 Counselling information is classified as a category of victim-related information (also known as third party material) that requires a higher threshold (than for “other information”) before requests are made. Requests for such information may only be made where the information sought is likely to contain evidence of "substantial probative value" to a reasonable line of enquiry. That is, it provides meaningful evidential significance that adds value to the investigation and contributes significantly to proving or disproving a crucial aspect of the case. This ensures that sensitive victim material is afforded additional protection when requested by authorised persons during an investigation.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales. Insofar as the provisions relate to the service police (the Royal Navy Police, the Royal Military Police or the Royal Air Force Police), the extent is England and Wales, Scotland and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales. Insofar as the provisions relate to the service police, their application is England and Wales, Scotland, and Northern Ireland

5. Policy Context

What is being done and why?

5.1 This instrument defines "counselling services" for the purposes of section 44A(4) of the Police, Crime and Sentencing Act 2022. Under this definition, a counselling service refers to any service, whether offered on a paid basis or voluntarily (e.g. by a charity), offering psychological or emotional support for the purpose of improving the service user's emotional and mental health.

5.2 While the statutory definition does not distinguish between registered and unregistered providers, the accompanying Code of Practice sets out how the duties apply in practice.[1] The Code set outs safeguards in respect of requests for counselling information including a rebuttable presumption against requesting these records. This instrument responds to concerns about the routine and intrusive use of counselling information in criminal investigations, particularly in rape and serious sexual offence cases. The definition ensures that counselling services - whether provided by registered professionals or trained volunteers - are covered, provided the service involves emotional, psychological, or mental health support, and is needed to ensure that only counselling services meeting the criteria are subject to the higher threshold, helping prevent unnecessary intrusion into victims' private lives.

What was the previous policy, how is this different?

5.3 Previously, there was no statutory definition of counselling services, and requests for counselling records were treated like other types third party material.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 44A(5) of the Police, Crime Sentencing and Courts Act 2022 (as amended) ("the 2022 Act") requires the Secretary of State to provide specified descriptions of "counselling services" for the purposes of section 44A(4). This provision ensures that an authorised person (as defined in Schedule 3 of the 2022 Act) may only request counselling information where they are satisfied that the request is necessary and proportionate to achieve the purpose of preventing, detecting, investigating or prosecuting crime; and has reason to believe that the information sought has substantial probative value to a reasonable line of enquiry.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Stakeholders were consulted during a 12-week public consultation held from April 2025 until July 2025. This included law enforcement, victims' groups, counsellors and

[1] https://www.gov.uk/government/publications/victim-information-requests-code-of-practice

victims. A total of 81 non-blank responses [64 completed survey responses (including 14 partial entries), 17 email responses] to the consultation were received.

7.2 The overall response was strongly supportive of legislative change. Respondents endorsed the introduction of clear statutory duties and a Code of Practice to improve consistency, transparency, and victim protection. Some objections were raised regarding the practical implementation of the new duties, particularly around notification timing and the definition of counselling services.

7.3 In response, the Government revised the Code to:

- Clarify the threshold for accessing counselling records (substantial probative value),
- Strengthen guidance on victim notification and engagement,
- Improve clarity and accessibility, including through an expanded Key Terms and Definitions section and additional footnotes to aid navigation.

7.4 The Government's response to the consultation will be published on GOV.UK on the lay date of the instrument.[2]

7.5 No formal consultation with devolved governments was required, as the instrument applies to England and Wales for civilian police forces and UK-wide for service police.

8. Applicable Guidance

8.1 The definition will be published embedded into the statutory Code of Practice on GOV.UK.[3]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Economic Note (EN) has been published alongside the Explanatory Memorandum on the Gov.uk website. The EN estimates familiarisation and training costs for police and CPS staff between £1.7 million and £25.9 million, with a central estimate of £6.6 million. These relate to time spent reading and implementing the Code of Practice. While benefits weren't monetised, the measure is expected to reduce unnecessary requests for victim information, improve engagement, and reduce case withdrawals. It also aims to improve victim experience, reduce trauma, and support equality outcomes, particularly for vulnerable groups.

Impact on businesses, charities and voluntary bodies

9.2 The impact on businesses, charities or voluntary bodies is minimal. While some may receive more requests for information, the instrument does not impose new legal obligations on them. The legislation does not impact small or micro businesses.

9.3 The impact on the public sector is limited to familiarisation and training costs, which are covered in the EN prepared for the Code of Practice.[4] These costs are offset by improved investigative efficiency and better protection of against intrusive requests for victims' personal information.

[2] https://www.gov.uk/government/consultations/victim-information-requests-code-of-practice
[3] https://www.gov.uk/government/publications/victim-information-requests-code-of-practice
[4] https://www.gov.uk/government/publications/victim-information-requests-code-of-practice

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Victim and Prisoners Act 2024 places a requirement on the Secretary of State to review the operation of these additional safeguards applicable to counselling records three years after they come into force.

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 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

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"). It does not relate to the UK's withdrawal from the European Union.