

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 3 of the Investigatory Powers Act 2016 (c. 25) (“the Act”) makes it an offence if a person intentionally intercepts a communication in the course of its transmission by means of a telecommunication system without lawful authority. Chapter 2 of Part 2 of the Act provides a number of ways in which the interception of communications may have lawful authority. They include section 46(1) of the Act, which gives the Secretary of State the power to make regulations authorising conduct which appears to the Secretary of State to constitute a legitimate practice reasonably required for the purpose, in connection with the carrying on of any relevant activities, of the monitoring or keeping a record of certain communications. “Relevant activities” are defined in section 46(4) of the Act, and include any business.

Regulation 3 sets out the conduct that is authorised by these Regulations. Conduct is authorised by these Regulations if it consists of the interception of a communication for one of the purposes listed in paragraphs (2), (3) or (5) of regulation 3. The interception must be effected by or with the express consent of a person who has the right to control the operation or use of the telecommunication system by means of which the communication is being transmitted.

Regulation 4 imposes further limits on the conduct that can be authorised by regulation 3.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.