

EXPLANATORY MEMORANDUM TO
THE INVESTIGATORY POWERS (CONSEQUENTIAL AMENDMENTS ETC.)
REGULATIONS 2018

2018 No. 682

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 These Regulations amend secondary legislation in relation to the commencement of the interception and equipment interference provisions of the Investigatory Powers Act 2016 ('the Act').
- 2.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Regulation 6 of this instrument corrects an error in S.I. 2018/349, in relation to which the Committee requested a memorandum on 18th April 2018.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland. As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The amendments made to secondary legislation by Schedule 1 to these Regulations are in consequence of the commencement of the interception and equipment interference provisions in the Act. Those provisions are due to come into force for the intelligence services and Ministry of Defence (MOD) on 27th June 2018, in consequence of commencement regulations which it is intended will be made in May 2018.
- 4.2 Regulation 5 designates the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union as an international agreement for the purposes of section 52 of the Act. That Convention is designated for the purposes of section 1(4) of the Regulation of Investigatory Powers Act 2000 ("RIPA") by S.I. 2004/158.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the whole of the United Kingdom.
- 5.2 The territorial application of this instrument is the whole of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The Act includes provisions about the interception of communications, equipment interference, the acquisition and retention of communications data, the retention of bulk personal datasets and the oversight of investigatory powers.
- 7.2 On 27 June 2018, the provisions of the Act relating to targeted and bulk interception and targeted and bulk equipment interference will be commenced to the extent that they apply to the intelligence services and the MOD. Schedule 1 to these Regulations amends secondary legislation in consequence of the commencement of the interception and equipment interference provisions.
- 7.3 The consequential amendments primarily address the disclosure of information. Where secondary legislation provides that a power or duty to disclose information is subject to the provisions of the Data Protection Act 1998 and Part 1 RIPA (which prohibits the disclosure of information relating to interception), these Regulations will replace references to Part 1 of RIPA with references to those Parts of the IPA which include prohibitions on disclosing information obtained under or relating to investigatory powers. In addition, the Regulations address a small number of other references to provisions of RIPA that are being repealed by the Act.
- 7.4 Regulation 5 designates the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union as an international agreement for the purposes of section 52 of the Act. Section 52 provides that a telecommunications operator may intercept communications in response to a request by the authorities of another country or territory, where certain conditions are met. One of the conditions is that the request is made in accordance with an international agreement designated for that purpose by the Secretary of State.

8. Consultation outcome

- 8.1 No consultation has taken place as this instrument makes amendments which are purely consequential.

9. Guidance

- 9.1 With regards to designation, the interception Code of Practice refers to interception in accordance with overseas requests.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument as no impact on business is foreseen. However, a full Impact Assessment was carried out for the Act.

11. Regulating small business

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

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 No specific action is proposed because, while the legislation applies to small businesses, no impact on small businesses is anticipated.

12. Monitoring & review

12.1 Section 260 of the Act 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.

13. Contact

13.1 Home Office Public Enquiries; public.enquiries@homeoffice.gsi.gov.uk; 0207 035 4848.