

Memorandum explaining purpose and effect of the Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2020

A. Introduction

1. This memorandum has been prepared to explain the Investigatory Powers (Communications Data) (Relevant Public Authorities and Designated Senior Officers) Regulations 2020. This memorandum explains in each case why a public authority is being granted communications data powers and includes the rationale for each change listed in the regulations.

B. Purpose and effect of the regulations

2. Schedule 4 to the Investigatory Powers Act 2016 sets out the public authorities that can obtain communications data. The list in Schedule 4 includes a range of public authorities including intelligence agencies, law enforcement agencies, HMRC, local authorities and others who have statutory duties to investigate crimes such as the Department for Health, the Home Office, DWP, Food Standards Agency and the Gambling Commission. These regulations include the addition of five public authorities who will gain the power to obtain communications data as they are increasingly unable to rely on local police forces to investigate crimes on their behalf. Minor amendments to the titles of designated senior officers are also being made to reflect organisational restructure and departmental name changes. The justification for new authorities gaining powers and an explanation of the all of the proposed changes can be found below.
3. **Addition of the Civil Nuclear Constabulary (CNC):** Although the current threat to nuclear sites in the UK is assessed as low, the risk posed by certain nuclear hazards remains high. It can also be difficult to accurately assess risk without the full information needed. Although the CNC does not expect to make large numbers of communications data requests, it requires powers to investigate threats to the most sensitive nuclear sites in the UK. For example, the Sellafield site holds the four biggest nuclear risks and hazards in Europe and the largest stores of civil plutonium in the world.
4. **Addition of the Environment Agency:** The Environment Agency has a significant regulatory and enforcement remit covering the natural environment in England. They are responsible for investigating over 400 different types of offence, which result in over 40,000 suspected offences each year. This includes £600 million of waste crime annually. In June 2018, the Secretary of State for the Environment (Rt Hon Michael Gove MP) announced an independent review into waste crime which concluded that: *“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”*.
5. **Addition of the Insolvency Service:** Fraudulent trading committed by company directors and cases involving breaches of company director disqualification orders, feature in a significant number of investigations.

Such breaches are considered by the courts to be serious misconduct attracting custodial sentences; individuals will often have been disqualified for previous company failings, incurring losses to creditors. The Insolvency Service assess that by acquiring communications data and being able to attribute subscribers to telephone numbers and analyse itemised billings, significant weight will be added to evidence that can be gathered. IP addresses and underlying e-mail account details will also be increasingly useful lines of enquiry to solve crimes within their remit.

6. **Addition of UK National Authority for Counter Eavesdropping (UKNACE):** UKNACE is a critical organisation that protects our national security. UKNACE detects hostile technical espionage activities and eavesdropping activity against UK assets in UK government buildings, secure environments, embassies and other UK controlled overseas environments that process sensitive material. UKNACE requires communications data powers in order to identify and locate an attacker or an illegal transmitting device.
7. **Addition of The Pensions Regulator (TPR):** TPR has become responsible for enforcement of employer automatic enrolment duties, which have been gradually rolled out to over one million businesses since 2012. This has dramatically increased the scale of TPR's enforcement activity and highlighted the need for effective sanctions, including prosecution. In parallel with this, TPR has adapted its approach to its other areas of responsibility, putting more emphasis on prosecution as a means of securing compliance and punishing wrongdoing. Communications data powers will be highly valuable in investigations as digital footprints become increasingly significant.
8. **“National Health Service Business Services Authority” to “NHS Counter Fraud Authority”:** This change reflects organisational restructure within the NHS.
9. **Under the entry for Information Commissioner, “Head of enforcement or an equivalent grade” to “Head of department in an investigation or intelligence role”:** this change reflects job title amendments within the Information Commissioner's Office.
10. **Under the entry for the Department for Transport, “Air Accident” substitute “Air Accidents”:** This change reflects an error in the entry for the Air Accidents Investigation Branch.
11. **Under the entry for the Ministry of Justice, for both “security group of the National Offender Management Service” and “security group of the National Offender Manager Service” to “Security, Order and Counter-Terrorism Directorate of Her Majesty's Prison and Probation Service”:** This change reflects organisational restructure within the Ministry of Justice.
12. **“Department of Health” to “Department of Health and Social Care”:** This change reflects a change in the name of the department.