

EXPLANATORY MEMORANDUM TO
THE INVESTIGATORY POWERS (COMMUNICATIONS DATA) (RELEVANT
PUBLIC AUTHORITIES AND DESIGNATED SENIOR OFFICERS) (NO.2)
REGULATIONS 2020

2020 No. 661

1. Introduction

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

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 removes the entries for a fire and rescue authority under the Fire and Rescue Services Act 2004 and the Northern Ireland Fire and Rescue Service Board. This instrument will also make a minor amendment to the minimum office, rank or position that must be held by a Designated Senior Officer within the Department for Work and Pensions to obtain communications data.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial 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) (No.2) 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 267(5)(d) of the IPA provides that a statutory instrument containing regulations under section 71 to which section 72 does not apply is subject to annulment in pursuance of a resolution of either House of Parliament. Section 72 of the IPA does not apply to this instrument as this instrument only removes public authorities from the table in Schedule 4 and modifies column 3 of the table in a way that does not involve replacing an office, rank or position specified in that column in relation to a particular public authority with a lower office, rank or position in relation to the same authority.

7. Policy background

- 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 A minor update is being made to the minimum office, rank or position of Designated Senior Officers within the Department for Work and Pensions to ensure accuracy following organisational restructure. The Designated Senior Officer is a person holding a prescribed office, rank or position in a relevant public authority, who is responsible for authorising certain applications where a requirement for independent authorisation does not apply – for example, in urgent cases.
- 7.3 The entries for a fire and rescue authority under the Fire and Rescue Services Act 2004 and the Northern Ireland Fire and Rescue Service Board are being omitted in these regulations. It has been assessed by the relevant public authorities and the Home Office that it is no longer necessary and proportionate for these public authorities to hold communications data powers under the Investigatory Powers Act due to low usage. The Fire and Rescue Service will still be able to access communications data through the golden hour provisions, allowing for Telecommunications Operators to continue to provide emergency services with communications data up to one hour after a 999/111 call has been terminated in order to continue protecting the public effectively.

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 Governance leads within the Fire and Rescue Service were consulted throughout 2019 and into early 2020 on their removal from Schedule 4 IPA. A joint decision was taken by the Home Office and the Fire and Rescue Service in February 2020 to remove the entries for a fire and rescue authority under the Fire and Rescue Services Act 2004 and the Northern Ireland Fire and Rescue Service Board from Schedule 4 IPA following confirmation that communications data powers were no longer required. The Investigatory Powers Commissioner's Office also confirmed their support for this removal in February 2020. The Department for Work and Pensions made the Home Office aware of a change to the name of their Directorate with communications data acquisition powers in 2019. The Home Office agreed to amend the entry for the Department for Work and Pensions in Schedule 4 to reflect this name change.

11. Guidance

11.1 Guidance is not required for this instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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 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: 07788363308 or email: COMMSDATA@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 James Muncie, Acting 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.