

EXPLANATORY MEMORANDUM TO
THE INVESTIGATORY POWERS ACT 2016 (CONSEQUENTIAL AMENDMENTS
AND SAVING PROVISIONS) REGULATIONS 2017

2017 No. 845

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 The instrument makes necessary amendments to secondary legislation in consequence of the commencement of the oversight functions of the Investigatory Powers Commissioner.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 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 Investigatory Powers Act 2016 (“the Act”) provides for the Investigatory Powers Commissioner and other Judicial Commissioners. They will carry out the oversight functions that are currently exercised by the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Chief Surveillance Commissioner and other Surveillance Commissioners, and the Scottish Chief Surveillance Commissioner and other Scottish Surveillance Commissioners. Those Commissioners are abolished by the Act.
- 4.2 These Regulations amend secondary legislation so that references to the Investigatory Powers Commissioner and the other Judicial Commissioners replace references to the Commissioners that are being abolished.
- 4.3 When section 240 of the Act is commenced, saving provisions will be made such that persons holding office as a Surveillance Commissioner or Assistant Surveillance Commissioner immediately before section 240 comes into force may continue to hold office until 31st December 2017 or 30th April 2018 respectively.
- 4.4 The saving provisions in these Regulations provide that the references to Judicial Commissioners which this instrument inserts into secondary legislation may be read as including Surveillance Commissioners until 31st December 2017 and (where appropriate) Assistant Surveillance Commissioners until 30 April 2018.

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 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 Investigatory Powers Act 2016 consolidates and strengthens the oversight of the use of Investigatory Powers. The existing fragmented oversight arrangements, in which oversight is carried out by the Interception of Communications Commissioner, the Intelligence Services Commissioner, the Chief Surveillance Commissioner and other Surveillance Commissioners, and the Scottish Chief Surveillance Commissioner and other Scottish Surveillance Commissioners, is replaced. The Act creates instead a single, powerful Investigatory Powers Commissioner, supported by other Judicial Commissioners.
- 7.2 These Regulations amend secondary legislation so that references to the Investigatory Powers Commissioner and the other Judicial Commissioners replace references to the Commissioners that are being abolished. This will enable the Investigatory Powers Commissioner and other Judicial Commissioners to carry out all of the functions exercised by the Commissioners they are replacing.

Consolidation

- 7.3 None required.

8. Consultation outcome

- 8.1 No consultation has been held on these amendments as they do not change policy, they simply amend references in other legislation to commissioners that are being abolished.

9. Guidance

- 9.1 None required.

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.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 No review of this instrument is planned as it merely makes consequential amendments to secondary legislation and saving provisions. However, the amendments relate to the functions of the Investigatory Powers Commissioner and other Judicial Commissioners. Section 234 of the Act requires the Investigatory Powers Commissioner to make an annual report to the Prime Minister regarding the carrying out of the functions of the Commissioners. The annual report must be published and laid before Parliament.

13. Contact

- 13.1 James Robertson at the Home Office Telephone: 0207 035 1249 or email: james.robertson15@homeoffice.x.gsi.gov.uk can answer any queries regarding the instrument.