

Draft Order laid before Parliament under section 12(10) of the Regulation of Investigatory Powers Act 2000 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2002 No.

INVESTIGATORY POWERS

**Regulation of Investigatory Powers (Maintenance
of Interception Capability) Order 2002**

Made - - - - 2002
Coming into force - - 1st August 2002

Whereas the Secretary of State has consulted the persons listed in section 12(9) and (11) of the Regulation of Investigatory Powers Act 2000(1) about this Order;

And whereas a draft of this Order has been laid before Parliament and approved by a resolution of each House;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 12(1), (2) and (5) and section 78(5) of that Act, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Regulation of Investigatory Powers (Maintenance of Interception Capability) Order 2002 and shall come into force on 1st August 2002.

(2) In this Order “service provider” means a person providing a public postal service or a public telecommunications service, or proposing to do so.

Interception capability

2.—(1) The Schedule to this Order sets out those obligations which appear to the Secretary of State reasonable to impose on service providers for the purpose of securing that it is and remains practicable for requirements to provide assistance in relation to interception warrants to be imposed and complied with.

(2) Subject to paragraph (3) the obligations in—

(a) Part I of the Schedule only apply to service providers who provide, or propose to provide, a public postal service; and

- (b) Part II of the Schedule only apply to service providers who provide, or propose to provide, a public telecommunications service.
- (3) The obligations in Part II of the Schedule shall not apply to service providers who—
 - (a) do not intend to provide a public telecommunications service to more than 10,000 persons in any one or more parts of the United Kingdom and do not do so; or
 - (b) only provide, or propose to provide, a public telecommunications service in relation to the provision of banking, insurance, investment or other financial services.

Interception capability notices

3.—(1) The Secretary of State may give a service provider a notice requiring him to take all such steps falling within paragraph (2) as may be specified or described in the notice.

(2) Those steps are ones appearing to the Secretary of State to be necessary for securing that the service provider has the practical capability of meeting the obligations set out in the Schedule to this Order.

Referral of notices to the Technical Advisory Board

4. The period within which any person to whom a notice has been given under article 3 may refer the notice to the Technical Advisory Board is specified as being before the end of 28 days from the date of the notice.

Home Office
2002

Parliamentary Under-Secretary of State

SCHEDULE

Article 2

OBLIGATIONS ON SERVICE PROVIDERS

Part I:

Interception Capability for Public Postal Services

1. To ensure the interception and temporary retention of postal items destined for addresses in the United Kingdom for provision to the person on whose application the interception warrant was issued.
2. To provide for the interception and retention of postal items sent by identified persons where the carrier keeps records of who sent which item in the course of their normal business.
3. To maintain a system of opening, copying and resealing of any postal item carried for less than £1.
4. To comply with the obligations set out in paragraphs 1 to 3 above in such a manner that the chance of the interception subject or other unauthorised persons becoming aware of any interception is minimised.

Part II:

Interception Capability for Public Telecommunication Services

5. To provide a mechanism for implementing interceptions within one working day of the service provider being informed that the interception has been appropriately authorised.
6. To ensure the interception, in their entirety, of all communications and related communications data authorised by the interception warrant and to ensure their simultaneous (i.e. in near real time) transmission to a hand-over point within the service provider's network as agreed with the person on whose application the interception warrant was issued.
7. To ensure that the intercepted communication and the related communications data will be transmitted so that they can be unambiguously correlated.
8. To ensure that the hand-over interface complies with any requirements communicated by the Secretary of State to the service provider, which, where practicable and appropriate, will be in line with agreed industry standards (such as those of the European Telecommunications Standards Institute).
9. To ensure filtering to provide only the traffic data associated with the warranted telecommunications identifier, where reasonable.
10. To ensure that the person on whose application the interception warrant was issued is able to remove any electronic protection applied by the service provider to the intercepted communication and the related communications data.
11. To enable the simultaneous interception of the communications of up to 1 in 10,000 of the persons to whom the service provider provides the public telecommunications service, provided that those persons number more than 10,000.
12. To ensure that the reliability of the interception capability is at least equal to the reliability of the public telecommunications service carrying the communication which is being intercepted.

13. To ensure that the intercept capability may be audited so that it is possible to confirm that the intercepted communications and related communications data are from, or intended for the interception subject, or originate from or are intended for transmission to, the premises named in the interception warrant.

14. To comply with the obligations set out in paragraphs 5 to 13 above in such a manner that the chance of the interception subject or other unauthorised persons becoming aware of any interception is minimised.

EXPLANATORY NOTE

(This note is not part of the Order)

Part I of the Regulation of Investigatory Powers Act 2000 (“the 2000 Act”) contains provisions about the interception of communications transmitted by means of public postal service or a public telecommunications service. Interception is permitted under the 2000 Act by certain public authorities who obtain an interception warrant. This Order sets out the obligations which it appears to the Secretary of State reasonable to impose on the providers of public postal services or a public telecommunications services (“service providers”) for the purpose of securing that it is and remains practicable for requirements to provide assistance in relation to interception warrants to be imposed and complied with.

These obligations are set out in the Schedule to the Order. The obligations in Part I of the Schedule relate only to persons who provide, or propose to provide, a public postal service. The obligations in Part II of the Schedule relate only to persons who offer, provide, or propose to provide a public telecommunications service to more than 10,000 persons in any one or more parts of the United Kingdom, other than service providers who only provide a public telecommunications service in relation to the provision of banking, insurance, investment or other financial services.

Article 3 enables the Secretary of State to ensure compliance with the obligations by providing that he may give a service provider a notice requiring it to take the steps described in the notice. The notice may only contain steps which appear to the Secretary of State necessary for securing that that service provider has the practical capability of meeting those obligations set out in the Schedule which apply to that service provider.

Article 4 specifies the period within which a person served with a notice may refer it to the Technical Advisory Board.

This Order was notified in draft to the European Commission in accordance with Directive [98/34/EC](#), as amended by Directive [98/48/EC](#).