

# **REGULATION OF INVESTIGATORY POWERS ACT 2000**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Chapter II***

#### ***Section 22: Obtaining and disclosing communications data.***

161. This Section explains the purposes for which communications data may be sought under this Chapter and the arrangements by which such data may be required.
162. *Subsection (1)* explains that the strict test of "necessity" must be met before any communications data is obtained under this Chapter. The assessment of necessity is one made by a person designated for the purposes of this Chapter (defined in Section 25(2)).
163. *Subsection (2)* explains the reasons for which communications data may be required. With the exception of (g), these are the same as the purposes for which directed surveillance and the use of a covert human intelligence source may be permitted by Sections 28 and 29 of the Act.
164. *Subsections (3) and (4)* describe the two ways in which communications data may be obtained. Firstly, subsection (3) provides a means for a designated person to authorise someone within the same relevant public authority (see Section 25(1)). This provides a legal basis upon which the public authority may collect the communications data themselves. For example, if a private telecommunications operator was technically unable to collect certain communications data, this subsection would provide the authority to allow an investigating body to collect the data themselves.
165. *Subsection (4)* provides the second way in which communications data may be obtained, where the designated person serves a notice upon the holder of the data, requiring them to comply with the terms of the notice.
166. *Subsection (5)* introduces a proportionality test. The designated person must not only consider the communications data to be "necessary" (subsection (1)) but must also consider the conduct involved in obtaining the communications data to be "proportionate".
167. *Subsection (6)* requires a communications service provider in receipt of a notice under subsection (4) above to comply with it as soon as is reasonably practicable.
168. *Subsection (7)* provides that a holder of data will not be required to supply data unless it is reasonably practicable to do so.
169. *Subsection (8)* explains that if a communications service provider fails to provide the required communications data then the Secretary of State may take civil proceedings against them, which may result in the issue of, inter alia, an injunction which would have the effect of compelling the provision of data.