

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter II

156. This Chapter provides a legislative framework to cover the requisition, provision and handling of communications data. It explains the duties and responsibilities placed upon each party involved in these processes and creates a system of safeguards, reflecting the requirements of Article 8 of the European Convention on Human Rights.

Section 21: Lawful acquisition and disclosure of communications data

157. This Section explains the scope of this Chapter, the meaning of the term “communications data”, and ensures that provision of communications data under these provisions fully meets the requirements of Article 8.
158. *Subsection (1)* draws a distinction between interception of communications in the course of their transmission, which is activity excluded from this part of the Act, and conduct involving the obtaining of or disclosure of communications data, which is activity covered by this part of the Act.
159. *Subsections (2) and (3)* have the effect of making the provision of communications data under this Chapter lawful. This ensures that there is no liability attached to actions undertaken as a result of a requirement or authorisation under this Chapter.

“Relevant enactment” is defined in subsection (5)

160. *Subsection (4)* explains what “communications data” means. In essence, it includes information relating to the use of a communications service but makes clear that this does not include the contents of the communication itself. The first part of the definition refers to traffic data comprised in or attached to a communication. The same term is used in Section 2(5).

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.

Section 23: Form and duration of authorisations and notices

170. This section specifies the way in which authorisations and notices must be completed and their duration.
171. *Subsections (1) and (2)* explain the format which authorisations and notices must take.
172. *Subsection (3)* restricts the persons to whom the data may be disclosed to the person giving the notice or another specified person who must be from the same relevant public authority.
173. *Subsection (4)* explains that disclosure may only be required of data in the possession of, or obtained by the communications service provider during the authorisation period of authorisations and notices, which is set at one month.
174. *Subsections (5) and (6)* permit an authorisation or notice to be renewed at any period during the month, by following the same procedure as in obtaining a fresh authorisation or notice.
175. *Subsection (7)* explains that the period for which a renewed authorisation or notice is extant begins at the point at which the notice or authorisation it is renewing expires.
176. *Subsection (8)* requires the cancellation of a notice as soon as it is clear that the reasons for which it was granted are no longer valid.

Section 24: Arrangements for payments

177. This section allows for payment arrangements to be made in order to compensate holders of communications data for the costs involved in complying with notices issued under this Chapter.

Section 25: Interpretation of Chapter II

178. This section defines the terms used in the Chapter dealing with communications data.

*These notes refer to the Regulation of Investigatory Powers
Act 2000 (c.23) which received Royal Assent on 28 July 2000*

179. *Subsection (2)* explains that the Secretary of State will identify the "persons designated for the purposes of this Chapter" in an order (negative resolution, see section 78). Under *subsection (3)*, he may place restrictions on who may act under these provisions and in what circumstances.