

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

“Postal service” and “telecommunications system” are defined in Section 2(1).

“Related communications data”, “intercepted material” and “international mutual assistance agreement” are defined in Section 20.

55. *Subsection (2) requires that the Secretary of State may not issue an interception warrant unless he is satisfied that the warrant is necessary on grounds set out in subsection (3). Subsection (2)(b) introduces a proportionality test. Proportionality, under Convention case-law, is an essential part of any justification of conduct which interferes with an Article 8 right.*
56. *Subsection (3) sets out the grounds on which the Secretary of State may issue warrants. He may not do so unless he considers that the warrant is necessary on one of those grounds. It would not therefore be sufficient for him to consider that a warrant might be useful in supplementing other material, or that the information that it could produce could be interesting. The word ‘necessary’ reflects the wording of Article 8 of the Convention – “necessary in a democratic society”.*
57. *Subsection (3)(a) “in the interests of national security” is the term used in Article 8 of the Convention. “National security” is not defined in the Act, as it is not in any other legislation in which it is used.*
58. *Subsection (3)(b) “for the purpose of preventing or detecting serious crime”. This reflects the provision in Article 8 “for the prevention of disorder and crime”, but is qualified by the word “serious”.*