

DATA RETENTION AND INVESTIGATORY POWERS ACT 2014

EXPLANATORY NOTES

BACKGROUND

The Regulation of Investigatory Powers Act 2000

14. **Chapter 2** of Part 1 of RIPA provides a regulatory framework for the acquisition of communications data. For example, necessity and proportionality tests are carried out by a designated senior officer, at a rank stipulated by Parliament, within a public authority before a request for data can be made. Section 25(1) of RIPA defines what constitutes a relevant public authority. Section 22(2) of RIPA provides the purposes for which communications data may be accessed. The Secretary of State has powers to add or remove public authorities and add purposes through secondary legislation.
15. Regarding interception, Chapter 1 of Part 1 of RIPA allows for law enforcement and security and intelligence agencies to gain access to the content of communications made by post or telecommunications. There are a number of safeguards. For example, access is only permitted under warrant from the Secretary of State. The Secretary of State must be satisfied that the interception is necessary for the purposes of national security, the prevention or detection of serious crime, or the economic well-being of the United Kingdom (where this specifically relates to national security), and proportionate to what is sought to be achieved. The information must not be able to be reasonably obtained by other means.
16. In part, this Act was required in order to clarify the intent of RIPA. While RIPA has always had implicit extraterritorial effect, some companies based outside the United Kingdom, including some of the largest communications providers in the market, had questioned whether RIPA applies to them. These companies argue that they will only comply with requests where there is a clear obligation in law. When RIPA was drafted it was intended to apply to telecommunications companies offering services to United Kingdom customers, wherever those companies were based.
17. The Act therefore clarifies the extra-territorial reach of RIPA in relation to both interception and communications data by adding specific provisions. This confirms that requests for interception and communications data to overseas companies that are providing communications services within the United Kingdom are subject to the legislation.
18. The Interception of Communications and the Acquisition and Disclosure of Communications Data codes of practice, made under section 71 of RIPA, specify that interception warrants can only be issued and communications data can only be obtained on the grounds of economic well-being when specifically related to national security. This Act makes this clear in primary legislation.
19. The Act also amends the definition of “telecommunications service” in RIPA. This is for the purposes of communications data and interception requests. It confirms that the

These notes refer to the Data Retention and Investigatory Powers Act 2014 (c.27) which received Royal Assent on Thursday 17 July 2014

full range of services provided by domestic and overseas companies to customers in the United Kingdom is covered by the definition.