

# DATA RETENTION AND INVESTIGATORY POWERS ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY

#### *Retention of relevant communications data*

#### *Section 2: Section 1: supplementary*

38. *Subsection (1)* provides relevant definitions. The Act uses definitions of telecommunications service provider and communications data as set out in Part 1 of RIPA. This is to ensure uniform definitions across access and retention regimes. Other definitions of terms used in the list of categories of data remain as set out in the 2009 Regulations. ‘Relevant communications data’ is defined as the data mentioned in the Schedule to the 2009 Regulations, so far as that data is generated or processed in the United Kingdom by public telecommunications operators in the process of supplying the telecommunications services concerned. The definition of public telecommunications operator ensures that a telecommunications systems provider or a telecommunications service provider can be subject to a notice. This distinction occurs, for example, when a company uses the physical network (this includes the network bandwidth and phone lines) belonging to another in order to provide their services to the public. The definition ensures that a request to retain can be imposed on whichever company holds the relevant data (which will depend on how they design their systems).
39. *Subsection (2)* provides that ‘relevant communications data’ includes data relating to unsuccessful call attempts but not unconnected calls. An unsuccessful call occurs, for example, when the person being dialled does not answer the call, but where the network has been able to successfully connect it. An unconnected call is where, for example, a call is placed, but the network is unable to carry it to its intended recipient. It is also made clear that “relevant communications data” is not the content of the communication.
40. *Subsection (3)* provides for the regulations to replicate the Schedule to the 2009 Regulations, for ease of reference and so the position is clear once the 2009 Regulations have been revoked.
41. *Subsection (4)* provides for the regulations under section 1 to be made by statutory instrument and for such regulations, by virtue of subsection (4)(b)(i), to confer or impose functions on any person. Paragraph (c) allows for codes of practice to be made, in particular by modifying sections 71 and 72 of RIPA.
42. *Subsection (5)* specifies that any statutory instrument under section 1 will be subject to the affirmative resolution procedure.