

REGULATION OF INVESTIGATORY POWERS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

For “provide assistance”, see subsection (9).

Section 12: Maintenance of interception capability

113. This section provides a power allowing the Secretary of State to impose obligations upon providers of publicly available communication services to maintain a reasonable intercept capability.

114. *Subsection (1)* provides the mechanism by which the Secretary of State may set out a framework for obligations upon persons providing or planning to provide public postal services or public telecommunications services. The Secretary of State will do this through an order (affirmative resolution, see subsection (10)) which lays out the obligations which he believes are reasonable, with the aim of ensuring that providers are capable of giving assistance in the implementation of interception warrants. The order itself will not impose specific requirements on providers but will describe in general terms the kind of intercept capability which they may be required to provide.

For the meaning of “public postal service” and “public telecommunications service”, see Section 2(1). But see also Section 12(4), which limits the application of this section.

115. *Subsection (2)* explains that the Secretary of State imposes obligations on particular providers by the service of individual notices describing in much greater detail than the order the precise steps they are required to take.

As to what steps may be imposed, see subsections (3) and (11). For the time limits for compliance, see subsection (8).

116. *Subsection (4)* provides that commercial and other organisations which provide a telecommunications service as no more than a means of accessing a further service of theirs (for example, a telephone banking service) will not be subject to any order under this section. The subsection also puts outside the scope of the section a telecommunications service that is necessarily incidental to a different service.

117. *Subsections (5) and (6)* concern the consideration of notices by the Technical Advisory Board (established by Section 13(1)). Where a person is served with a notice under subsection (2), they may ask the Board to consider the notice. The Board will consider the technical requirements and financial consequence of the notice, and report their conclusions to the person on whom the notice was served and to the Secretary of State. During that time, the obligations under the notice are suspended by virtue of paragraph (a). The Secretary of State, on receipt of advice from the Board, may withdraw the notice or re-issue it with or without modifications.

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

118. *Subsection (7)* requires persons served with a notice under subsection (2) to comply with it. The Secretary of State may bring civil proceedings to enforce this duty.
119. *Subsection (9)* requires the Secretary of State to consult with a number of people prior to making an order. These include, as the Secretary of State considers appropriate, the persons likely to have obligations imposed on them and their representatives, the Technical Advisory Board, and bodies which have statutory functions affecting providers of communication services. The latter category includes, for example, OFTEL.
120. *Subsection (11)* explains that the steps that may be required to be taken should take account of the need for security and confidentiality and the need to facilitate (such as by audit mechanisms) the job of the Interception Commissioner.