

# **ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 11: Policing etc**

#### **Independent Police Complaints Commission**

#### ***Section 137: Provision of information to IPCC***

383. This section inserts new paragraphs 19ZA to 19ZD in Schedule 3 to the 2002 Act, dealing with the handling of police complaints and conduct matters. The effect of this section is to provide the IPCC with a broad power to serve an information notice on any person, where the information is reasonably required for the discharge of the IPCC's statutory functions, that is, where it is necessary and relevant to a matter under investigation by the IPCC. For example, the IPCC may use this power to request passenger travel information (such as Oyster card data) which would reveal the identity of witnesses to an event or provide evidence of passenger movements, central to an investigation about a complaint, conduct or death or serious injury matter.
384. New paragraph 19ZA(1) sets out that the IPCC may serve a notice in accordance with any investigation carried out by it under paragraph 19 of Schedule 3. The effect of this is that the power will only be exercisable by the IPCC when conducting an independent investigation. The requirements as to the content of the notice are set out at new paragraph 19ZA(4).
385. It is expected that the IPCC will seek the information it requires by first making an informal request to a relevant person. However there may be occasions when it would be more appropriate or convenient for the IPCC to be able to serve a notice immediately, without having to be required to first make an informal request. New paragraph 19ZA(1) therefore provides for this. Where information requested is no longer required, the IPCC may cancel a notice pursuant to new paragraph 19ZA(6).
386. Certain information is excluded from the requirement which is intended to act as an important safeguard to persons on whom an information notice may be served. An information notice must not – as set out at new paragraph 19ZA(2) – require a person to disclose information which may reveal evidence of the commission of an offence by the person concerned, reflecting the approach taken in provisions contained within section 43(8) to (8C) of the Data Protection Act 1998. This amounts to a protection from self-incrimination. The notice must also not require disclosure of information which is legally privileged within the meaning of section 10 of PACE. Further, under new paragraph 19ZA(2)(c), the IPCC cannot require disclosure of communications data that is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (“RIPA”). New paragraph 19ZA(2)(d) prevents a notice from requiring disclosure of information falling within the “control principle”, that is information provided to the person by, or by an agency of, the Government of a country or territory outside the

United Kingdom where that Government does not consent to the disclosure of that information. Nor can the IPCC require a postal or telecommunications operator (within the meaning of Chapter 2 of Part 1 of RIPA) to provide communications data (within the meaning of that Chapter). For example, the IPCC could not use an information notice to require the disclosure of subscriber or billing information from a telephone or internet service provider. Nor could it require address details from the Post Office or utility suppliers to locate potential witnesses. This is to ensure that the IPCC's existing duties in respect of RIPA material are not altered and that the IPCC continues to obtain data from communications service providers in accordance with the framework in RIPA, rather than by virtue of the new broad information notice power.

387. New paragraph 19ZB(1) provides that a failure to comply with the notice, or knowingly or recklessly making a false statement in connection with it, will enable the IPCC to certify the failure to the High Court which may then deal with the matter as a contempt of court; this reflects the approach set out in section 54 of the Freedom of Information Act 2000.
388. A person has a right of appeal against the notice by virtue of new paragraph 19ZC to the First-tier Tribunal on the ground that the notice is not in accordance with the law. This reflects existing provision for appeals in the Data Protection Act 1998 and Freedom of Information Act 2000, which each relate to appeals against notices which may be given to a person in respect of the disclosure (or non-disclosure) of information. In new paragraph 19ZC, the term "not in accordance with the law" refers to an error of law which includes but is not limited to a breach of any specific right under the European Convention of Human Rights or otherwise. If the Tribunal considers that the notice is not in accordance with the law, it is required to quash the notice and may give direction to the IPCC so that it may serve a further notice. Given that the IPCC may only request information or serve a notice in accordance with the new paragraph 19ZA where it is reasonably required, this acts as a further safeguard to ensure all data requests are necessary, proportionate and justified.
389. New paragraph 19ZD provides for the handling of intelligence service and intercept information, and information from a government department which, if disclosed, would in the opinion of the Secretary of State (or Minister of the Crown in charge of the relevant department if that Minister is not a Secretary of State) damage national security, international relations, or the economic interests of the United Kingdom (or any part of the United Kingdom). Where the IPCC receives such information, directly or indirectly, it is prohibited from making onward disclosure of that material unless it has consent from the "relevant authority" (defined in 19ZD(4)). The IPCC is also prohibited from disclosing – - without consent – the fact that it has received such material. This is the effect of new paragraph 19ZD(1). The prohibition on the IPCC disclosing without consent such information, or the fact that it has received such information, will mean that it must take all reasonable steps to avoid such disclosure, including inadvertent disclosure.
390. Where the relevant authority (defined in new paragraph 19ZD(4)) provides consent and the IPCC discloses information to other persons, a similar bar on onward disclosure is placed on the recipient of that information from the IPCC (new paragraph 19ZD(3)), unless consent has been granted by the relevant authority.