

DATA RETENTION AND INVESTIGATORY POWERS ACT 2014

EXPLANATORY NOTES

COMMENTARY

Investigatory powers

Section 3: Grounds for issuing warrants and obtaining data

43. *Subsections (1) and (2)* amend section 5 of RIPA regarding the Secretary of State's power to issue interception warrants on the grounds of economic well-being. The Interception of Communications Code of Practice, made under section 71 of RIPA, specifies that interception warrants can only be issued on such grounds when economic well-being is directly related to national security. In the interests of clarity, the Act makes express provision for this requirement by amending RIPA.
44. *Subsections (3) and (4)* make the same amendment as subsections (1) and (2) but with respect to access to communications data. The Acquisition and Disclosure of Communications Data Code of Practice, made under section 71 of RIPA, specifies that data can only be acquired in the interests of the economic well-being of the United Kingdom when it specifically relates to national security. The Act also makes express provision for this requirement by amending RIPA.

Section 4: Extra-territoriality in Part 1 of RIPA

45. This section clarifies certain provisions of Chapters 1 and 2 of Part 1 of RIPA to put beyond doubt that those provisions have extra-territorial effect.
46. *Subsection (1)* provides that Part 1 of RIPA is amended.
47. *Subsection (2)* inserts new subsections into section 11 of RIPA (implementation of interception warrants). New subsection (2A) provides that a copy of an interception warrant may be served on a person outside the United Kingdom, and may relate to conduct outside the United Kingdom. New subsection (2B) provides for the practicalities of serving the warrant on a person based outside the United Kingdom. The warrant can be served (in addition to service by electronic or other means) at an office within the United Kingdom, to an address, specified by the overseas person, within the United Kingdom, or by making it available for inspection within the United Kingdom. New subsection (2C) provides that the method of service by making available for inspection is only available where no other means of service is reasonably practicable, and that appropriate steps must be taken to bring the warrant to the attention of the person on whom a copy is served.
48. *Subsection (3)* amends section 11(4) of RIPA. That subsection provides that where a copy of a warrant is served on a person who provides a postal service, a person who provides a public telecommunications service (defined as a telecommunications service provided to the public in the United Kingdom), or a person having control of telecommunication system in the United Kingdom, that person has a duty to take steps

to give effect to the warrant. Subsection (3) amends section 11(4) to make clear the duty applies whether or not the person is in the United Kingdom.

49. *Subsection (4)* inserts a new subsection (5A) into section 11 of RIPA, which sets out factors to be taken into account when determining whether steps for giving effect to a warrant are reasonably practicable.
50. *Subsection (5)* amends section 11(8) of RIPA, which provides that the obligation to give effect to the warrant is enforceable by civil proceedings. The amendment clarifies that this applies where the person subject to the duty is outside the United Kingdom.
51. *Subsection (6)* inserts new subsections into section 12 of RIPA (maintenance of interception capability). New subsection (3A) specifies that the Secretary of State's power to give a notice requiring the maintenance of a permanent interception capability to a telecommunications service provider may be exercised in respect of a provider based outside the United Kingdom or in relation to conduct outside the United Kingdom. A public telecommunications service is one provided to the public in the United Kingdom. New subsection (3B) provides for the practicalities of giving a notice to a person based outside the United Kingdom. In addition to electronic or other means, it may be given by delivering it to an office in the United Kingdom, or to a specified address in the United Kingdom.
52. *Subsection (7)* amends section 12(7) of RIPA, which provides that where a notice to maintain an interception capability has been served on a telecommunications service provider, that person has a duty to comply with the notice, enforceable by civil proceedings for an injunction. The amendment makes clear that the duty, and the power to enforce, apply whether or not the telecommunications service provider is in the United Kingdom.
53. *Subsection (8)* inserts new subsections into section 22 of RIPA (obtaining and disclosing communications data). New subsection (5A) provides that an authorisation or a notice for the obtaining of communications data under section 22 may relate to conduct outside the United Kingdom, and a notice may be given to a person outside the United Kingdom. New subsection (5B) provides for the practicalities of giving a notice to a person outside the United Kingdom.
54. *Subsection (9)* amends section 22(6) of RIPA to make clear that the duty on a postal or telecommunications operator to comply with a notice applies whether or not the operator is in the United Kingdom.
55. *Subsection (10)* amends section 22(8) of RIPA to make clear that the power to enforce that duty by civil proceedings applies in respect of a person outside the United Kingdom.

Section 5: Meaning of “telecommunications service”

56. This section inserts a new subsection into section 2 of RIPA. New section 2(8A) makes clear that the definition of “telecommunications service” includes companies who provide internet-based services, such as webmail.

Section 6: Half yearly reports by the Interception of Communications Commissioner

57. RIPA provides for annual reports by the Interception of Communications Commissioner. This section amends RIPA to require the Commissioner to report half-yearly. As with the yearly reports, the half-yearly report must be laid before Parliament and sent to the Prime Minister. As in section 58(7) of RIPA, the Prime Minister will retain the power to exclude information from half-yearly reports. This includes when disclosure is against the public interest or for reasons of national security.

Section 7: Review of investigatory powers and their regulation

58. *Subsection (1)* provides for the Secretary of State to appoint the independent reviewer of terrorism legislation to review the regulation and operation of investigatory powers. The independent reviewer is a post that already exists under the Terrorism Act 2006. This section will add these additional responsibilities to his remit until a report has been provided to the Prime Minister (see subsection (4)).
59. *Subsection (2)* provides for the issues that the independent reviewer must consider. Specifically, the independent reviewer must consider current and future threats to the United Kingdom; capabilities needed to combat such threats; privacy safeguards; challenges faced by changing technologies; transparency and oversight; and the effectiveness of existing legislation and whether there is a case for new or amending legislation.
60. *Subsection (3)* ensures, if reasonably practicable, that the review will be completed by 1 May 2015.
61. *Subsection (4)* specifies that a report on the outcome of the review must be sent to the Prime Minister.
62. *Subsections (5) and (6)* provide for the Prime Minister to lay a copy of the report before Parliament. If the Prime Minister decides that publishing certain sections of the report will be contrary to the public interest or prejudicial to national security they can be excluded from the report. When the Prime Minister wishes to exclude a section from the report a statement must be provided to Parliament that the section has been excluded.
63. *Subsection (7)* provides for the Secretary of State to pay the independent reviewer expenses incurred in carrying out functions under this section.
64. *Subsection (8)* specifies that the independent reviewer is the person appointed under section 36(1) of the Terrorism Act 2006.
65. Once the independent reviewer has provided his report to the Prime Minister, the additional responsibilities under this section will cease.