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STATUTORY INSTRUMENTS

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**2018 No. 1123**

**The Data Retention and Acquisition Regulations 2018**

**Power of designated senior officers to grant authorisations in urgent cases**

7. After section 61 insert—

**“61A Power of designated senior officers to grant authorisations: urgent cases**

(1) Subsection (2) applies if a designated senior officer of a relevant public authority considers—

- (a) that it is necessary to obtain communications data for a purpose falling within subsection (7),
- (b) that it is necessary to obtain the data for the purposes of a specific investigation or a specific operation,
- (c) that there is an urgent need to obtain the data, and
- (d) that the conduct authorised by the authorisation is proportionate to what is sought to be achieved.

(2) The designated senior officer may authorise any officer of the relevant public authority to engage in any conduct which—

- (a) is for the purpose of obtaining the data from any person, and
- (b) relates to—
  - (i) a telecommunication system, or
  - (ii) data derived from a telecommunication system.

(3) Subsections (1) and (2) are subject to—

- (a) section 62 (restrictions in relation to internet connection records),
- (b) sections 70, 73 and 75 and Schedule 4 (restrictions relating to certain relevant public authorities),
- (d) section 76 (requirement to consult a single point of contact), and
- (e) section 77 (Commissioner approval for authorisations to identify or confirm journalistic sources).

(4) Authorised conduct may, in particular, consist of an authorised officer—

- (a) obtaining the communications data themselves from any person or telecommunication system,
- (b) asking any person whom the authorised officer believes is, or may be, in possession of the communications data or capable of obtaining it—
  - (i) to obtain the data (if not already in possession of it), and
  - (ii) to disclose the data (whether already in the person's possession or subsequently obtained by that person) to a person identified by, or in accordance with, the authorisation, or

- (c) requiring by notice a telecommunications operator whom the authorised officer believes is, or may be, in possession of the communications data or capable of obtaining it—
  - (i) to obtain the data (if not already in possession of it), and
  - (ii) to disclose the data (whether already in the operator's possession or subsequently obtained by the operator) to a person identified by, or in accordance with, the authorisation.
- (5) An authorisation—
  - (a) may relate to data whether or not in existence at the time of the authorisation,
  - (b) may authorise the obtaining or disclosure of data by a person who is not an authorised officer, or any other conduct by such a person, which enables or facilitates the obtaining of the communications data concerned, and
  - (c) may, in particular, require a telecommunications operator who controls or provides a telecommunications system to obtain or disclose data relating to the use of a telecommunications service provided by another telecommunications operator in relation to that system.
- (6) An authorisation—
  - (a) may not authorise any conduct consisting in the interception of communications in the course of their transmission by means of a telecommunication system, and
  - (b) may not authorise an authorised officer to ask or require, in the circumstances mentioned in subsection (4)(b) or (c), a person to disclose the data to any person other than—
    - (i) an authorised officer, or
    - (ii) an officer of the same relevant public authority as an authorised officer.
- (7) It is necessary to obtain communications data for a purpose falling within this subsection if it is necessary to obtain the data—
  - (a) for the applicable crime purpose (see subsection (8)),
  - (b) in the interests of public safety,
  - (c) for the purpose of preventing death or injury or any damage to a person's physical or mental health, or of mitigating any injury or damage to a person's physical or mental health,
  - (d) to assist investigations into alleged miscarriages of justice, or
  - (e) where a person (“P”) has died or is unable to identify themselves because of a physical or mental condition—
    - (i) to assist in identifying P, or
    - (ii) to obtain information about P's next of kin or other persons connected with P or about the reasons for P's death or condition.
- (8) In subsection (7)(a), “the applicable crime purpose” means—
  - (a) where the communications data is wholly or partly events data, the purpose of preventing or detecting serious crime;
  - (b) in any other case, the purpose of preventing or detecting crime or of preventing disorder.
- (9) The fact that the communications data which would be obtained in pursuance of an authorisation relates to the activities in the British Islands of a trade union is not, of itself,

sufficient to establish that it is necessary to obtain the data for a purpose falling within subsection (7).

(10) See—

- (a) sections 70 and 73 for the meanings of “designated senior officer” and “relevant public authority”;
- (b) section 84 for the way in which this Part applies to postal operators and postal services;
- (c) section 86(2A) for the meaning of “serious crime”.

**Changes to legislation:**

There are currently no known outstanding effects for the The Data Retention and Acquisition Regulations 2018, Section 7.