



Anti-terrorism, Crime and Security Act 2001

2001 CHAPTER 24

PART 11

RETENTION OF COMMUNICATIONS DATA

102 Codes and agreements about the retention of communications data

- (1) The Secretary of State shall issue, and may from time to time revise, a code of practice relating to the retention by communications providers of communications data obtained by or held by them.
- (2) The Secretary of State may enter into such agreements as he considers appropriate with any communications provider about the practice to be followed by that provider in relation to the retention of communications data obtained by or held by that provider.
- (3) A code of practice or agreement under this section may contain any such provision as appears to the Secretary of State to be necessary—
 - (a) for the purpose of safeguarding national security; or
 - (b) for the purposes of prevention or detection of crime or the prosecution of offenders which may relate directly or indirectly to national security.
- (4) A failure by any person to comply with a code of practice or agreement under this section which is for the time being in force shall not of itself render him liable to any criminal or civil proceedings.
- (5) A code of practice or agreement under this section which is for the time being in force shall be admissible in evidence in any legal proceedings in which the question arises whether or not the retention of any communications data is justified on the grounds that a failure to retain the data would be likely to prejudice national security, the prevention or detection of crime or the prosecution of offenders.

Status: This is the original version (as it was originally enacted).

103 Procedure for codes of practice

- (1) Before issuing the code of practice under section 102 the Secretary of State shall—
 - (a) prepare and publish a draft of the code; and
 - (b) consider any representations made to him about the draft;and the Secretary of State may incorporate in the code finally issued any modifications made by him to the draft after its publication.
- (2) Before publishing a draft of the code the Secretary of State shall consult with—
 - (a) the Information Commissioner; and
 - (b) the communications providers to whom the code will apply.
- (3) The Secretary of State may discharge his duty under subsection (2) to consult with any communications providers by consulting with a person who appears to him to represent those providers.
- (4) The Secretary of State shall lay before Parliament the draft code of practice under section 102 that is prepared and published by him under this section.
- (5) The code of practice issued by the Secretary of State under section 102 shall not be brought into force except in accordance with an order made by the Secretary of State by statutory instrument.
- (6) An order under subsection (5) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the coming into force of the code to which the order relates.
- (7) The Secretary of State shall not make an order under this section unless a draft of the order has been laid before Parliament and approved by resolution of each House.
- (8) The Secretary of State may from time to time—
 - (a) revise the whole or any part of the code issued under section 102; and
 - (b) issue the revised code.
- (9) The preceding provisions of this section shall apply (with appropriate modifications) in relation to the issue of any revised code under section 102 as they apply in relation to the first issuing of the code.
- (10) Subsection (9) shall not, in the case of a draft of a revised code, require the Secretary of State to consult under subsection (2) with any communications providers who would not be affected by the proposed revisions.

104 Directions about retention of communications data

- (1) If, after reviewing the operation of any requirements contained in the code of practice and any agreements under section 102, it appears to the Secretary of State that it is necessary to do so, he may by order made by statutory instrument authorise the giving of directions under this section for purposes prescribed in section 102(3).
- (2) Where any order under this section is in force, the Secretary of State may give such directions as he considers appropriate about the retention of communications data—
 - (a) to communications providers generally;
 - (b) to communications providers of a description specified in the direction; or
 - (c) to any particular communications providers or provider.

- (3) An order under this section must specify the maximum period for which a communications provider may be required to retain communications data by any direction given under this section while the order is in force.
- (4) Before giving a direction under this section the Secretary of State shall consult—
 - (a) with the communications provider or providers to whom it will apply; or
 - (b) except in the case of a direction confined to a particular provider, with the persons appearing to the Secretary of State to represent the providers to whom it will apply.
- (5) A direction under this section must be given or published in such manner as the Secretary of State considers appropriate for bringing it to the attention of the communications providers or provider to whom it applies.
- (6) It shall be the duty of a communications provider to comply with any direction under this section that applies to him.
- (7) The duty imposed by subsection (6) shall be enforceable by civil proceedings by the Secretary of State for an injunction, or for specific performance of a statutory duty under section 45 of the Court of Session Act 1988 (c. 36), or for any other appropriate relief.
- (8) The Secretary of State shall not make an order under this section unless a draft of it has been laid before Parliament and approved by a resolution of each House.

105 Lapsing of powers in section 104

- (1) Section 104 shall cease to have effect at the end of the initial period unless an order authorising the giving of directions is made under that section before the end of that period.
- (2) Subject to subsection (3), the initial period is the period of two years beginning with the day on which this Act is passed.
- (3) The Secretary of State may by order made by statutory instrument extend, or (on one or more occasions) further extend the initial period.
- (4) An order under subsection (3)—
 - (a) must be made before the time when the initial period would end but for the making of the order; and
 - (b) shall have the effect of extending, or further extending, that period for the period of two years beginning with that time.
- (5) The Secretary of State shall not make an order under subsection (3) unless a draft of it has been laid before Parliament and approved by a resolution of each House.

106 Arrangements for payments

- (1) It shall be the duty of the Secretary of State to ensure that such arrangements are in force as he thinks appropriate for authorising or requiring, in such cases as he thinks fit, the making to communications providers of appropriate contributions towards the costs incurred by them—
 - (a) in complying with the provisions of any code of practice, agreement or direction under this Part, or

- (b) as a consequence of the retention of any communications data in accordance with any such provisions.
- (2) For the purpose of complying with his duty under this section, the Secretary of State may make arrangements for the payments to be made out of money provided by Parliament.

107 Interpretation of Part 11

- (1) In this Part—
- “communications data” has the same meaning as in Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23);
 - “communications provider” means a person who provides a postal service or a telecommunications service;
 - “legal proceedings”, “postal service” and “telecommunications service” each has the same meaning as in that Act;
- and any reference in this Part to the prevention or detection of crime shall be construed as if contained in Chapter 2 of Part 1 of that Act.
- (2) References in this Part, in relation to any code of practice, agreement or direction, to the retention by a communications provider of any communications data include references to the retention of any data obtained by that provider before the time when the code was issued, the agreement made or the direction given, and to data already held by that provider at that time.