
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations bring into force provisions in the Investigatory Powers Act 2016 (c. 25) (“the Act”) relating to bulk acquisition warrants and bulk personal datasets and, to the extent not already commenced, provisions relating to the retention of communications data.

Regulation 2 brings into force on 25th July 2018 the ability of the Secretary of State to decide to issue warrants for the acquisition of communications data in bulk under Chapter 2 of Part 6 of the Act, and class and specific warrants for the retention or examination of bulk personal datasets under Part 7 of the Act. The power of Judicial Commissioners to approve decisions to issue such warrants is also commenced.

Regulation 3 brings into force on 22nd August 2018 the provisions necessary for such warrants to be issued, modified, cancelled and reviewed. It also commences offences of breaching the safeguards relating to examination of data obtained under a bulk acquisition warrant or a warrant under Part 7.

Regulation 4 commences the remaining provisions of Part 4 of the Act concerning the retention of communications data, the majority of which came into force in December 2016. The provisions to be commenced on 1st November 2018 include the requirement for a Judicial Commissioner to approve a decision to give a notice requiring the retention of communications data.

Regulation 5 provides that a direction under section 94 of the Telecommunications Act 1984 (c. 12) which imposes requirements relating to the acquisition of communications data in bulk remains in force for a maximum period of 6 months, notwithstanding the repeal of that section.

Regulation 6 makes transitional provision for the safeguards concerning retention and disclosure of material. During the period when a decision can be made to issue a warrant but a warrant cannot be issued, the requirement that the Secretary of State considers that satisfactory arrangements are in place concerning these matters may be satisfied by arrangements currently in place in relation to section 94 directions relating to the acquisition of communications data in bulk, or arrangements made under the Security Service Act 1989 (c. 5) or the Intelligence Services Act 1994 (c. 13) in relation to bulk personal datasets.

Regulation 7 makes transitional provision concerning the examination of communications data acquired in bulk. The requirement that examination may only be for an operational purpose specified in the warrant does not apply for 30 days after the issue of a bulk examination warrant which replaces a section 94 direction relating to the acquisition of communications data in bulk.

Regulation 8 provides that, for a period of 6 months, the provisions of Part 7 do not apply to a bulk personal dataset held by an intelligence agency before 22nd August 2018. An intelligence agency may apply for a bulk or specific warrant in respect of such a dataset during that period, and the dataset will then become subject to the Part 7 regime.

Section 201 of the Act provides that the requirement under Part 7 that retention or examination of a bulk personal dataset must be authorised by a class or specific BPD warrant does not apply where the dataset was obtained under another power in the Act. Regulation 9 provides that, in the same way, a dataset does not fall to be considered under the Part 7 regime if it is obtained by an intelligence agency under a warrant or authorisation under the Security Service Act 1989, the Intelligence Services Act 1994, the Regulation of Investigatory Powers Act 2000 (c. 23), the Wireless Telegraphy Act 2006 (c. 36) or section 94 of the Telecommunications Act 1984. Such material will remain subject to the relevant regime under which it was acquired but may (with the exception of communications data

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

acquired under a section 94 direction) be transferred in to the Part 7 regime under the procedure in section 225 of the Act.

Regulation 10 makes transitional provision in relation to section 65(7) of the Regulation of Investigatory Powers Act 2000 which sets out the persons under a duty to provide documents or information to the Investigatory Powers Tribunal. The transitional provision ensures that a person authorised to obtain communications data under section 22 of the 2000 Act is still subject to that duty, until that provision is repealed and replaced by Part 3 of the Act.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.