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Data Retention (EC Directive) Regulations 2007

7.13 pm

Lord Bassam of Brighton rose to move, That the draft regulations laid before the House on 28 June be approved.

The noble Lord said: My Lords, these regulations are made under Section 2(2) of the European Communities Act 1972 to enable the initial transposition of the European directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. The directive requires that traditional communications data from fixed-line and mobile telephony remains available for lawful disclosure, should disclosure become necessary and proportionate. Let me explain why communications data are important and why these measures are necessary.

Communications data have nothing to do with the content of a communication. They are information about who is communicating with whom, when and where they are communicating and the type of communication. Typically, public communications providers have retained this information for their own business purposes, such as billing, network management and the prevention of fraud. Different businesses retain this data for different periods, and once the business purpose for retaining the data has expired, they are required to destroy it. These regulations are relevant only to businesses that keep their data for less than a year.

So why is this information important? Communications data, such as mobile phone billing data, have a proven track record in supporting law enforcement and intelligence agency investigations and are a vital investigative tool. They provide evidence of associations between individuals and can place them in a particular location. They also provide evidence of innocence.

I would like to pay tribute to the public communications providers, big and small, that have provided enormous assistance to the Security Service and the police by making communications data available for lawful disclosure and that have participated in discussions with the Government about the implementation of the directive.

Without this data, the ability of the police and the Security Service painstakingly to investigate the associations between those involved in terrorist attacks and those who may have directed or financed their activity would be limited. The police and the Security Service's ability to investigate terrorist plots and serious crime must not be allowed to depend on the business practice that happens to be employed by the public communications provider that a particular suspect, victim or witness used. These draft regulations will ensure that, regardless of which public communication provider supplies the service, the communications data will be available.

This initial transposition applies to traditional types of communications only, such as mobile or fixed-line

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telephony. In recognition of the technical complexity of internet communications, the Government decided to delay implementation of the directive with regard to internet-related communications, and the public consultation showed overwhelming support for that approach. The retention of internet-related communications data has been postponed because our early engagement with the industry indicated that extra time would be required to clarify requirements and develop a technically sound approach to implementation.

In contrast, we have a great deal of experience with the retention of traditional communications

data. We have been working with the industry to ensure the retention of this data since 2003, when Parliament first approved the code of practice for the voluntary retention of communications data under Part 11 of the Anti-terrorism, Crime and Security Act 2001, which was made in response to the new threat from terrorism witnessed on 11 September 2001. Today, that threat is ever more apparent in the United Kingdom. The voluntary code has provided an important building block for establishing a practical framework for the retention of communications data in the UK, and the draft regulations provide the necessary next step to provide a mandatory framework.

As well as ensuring that communications data are available to assist investigations, regardless of the different business practices of public communications providers, many providers have expressed a preference for a mandatory framework, as they welcome the additional legal certainty that provides. These regulations make provisions to continue with the established UK policy of reimbursing public communications providers which incur expenditure from adjusting their business practices to comply with the Government's requirements for the retention of communications data. The recent public consultation confirmed the need for these provisions in order to avoid distortion of the highly competitive telecommunications market.

The justification for and practice of the retention of communications data was debated in the House during consideration of the Anti-terrorism, Crime and Security Act 2001 and the code of practice for the voluntary retention of communications data. These regulations do not stray from the established policy position on this matter; they simply move the traditional telephony sector of the industry from a voluntary to a mandatory framework for the retention of communications data, a move that is largely welcomed by the industry and the law enforcement community. I beg to move.

Moved, That the draft regulations laid before the House on 28 June be approved. *22nd Report from the Statutory Instruments Committee.—(Lord Bassam of Brighton.)*

Lord Henley: My Lords, I am grateful to the noble Lord for that full explanation of what is behind this order. I am also grateful that, as far as I can see, there has been no comment from the Joint Committee on Statutory Instruments or from the Merits Committee about these two. The noble Lord explained that these

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orders relate to landlines and mobiles only and that, after further consideration, there will have to be more orders relating to internet and other forms of communication. That is very important, particularly because, as I understand it—and I am always rather weak on these things—a great many telephone calls can now be made through the internet. Will the noble Lord explain a little more about that?

I do not need to ask my final question, but I do so in order that the noble Lord can put the matter on the record. Regulation 10(1), on payment, firmly states:

“The Secretary of State may reimburse any expenses incurred by a public communications provider in complying with these Regulations”.

The Explanatory Notes deal with why “may” and not “will” was used; however, it would be useful if the noble Lord spelt out that reason. As I said, it is important that we should have it on the record.

I hope that in due course we can pass these regulations.

Lord Dholakia: My Lords, I also thank the Minister for a very clear explanation of the regulations. We will not oppose them either, as they seem a sensible extension of our current arrangements. It would be useful to ask the Minister a few questions relating to the voice over internet protocol. Internet telephonic providers already have a competitive advantage. Will that

continue to exist or will almost all internet providers be covered by this regulation?

I am particularly keen to find out what other countries are doing in relation to what we are doing in this country. Are they, more or less, taking the same view on the practicalities? Has any other member state chosen to introduce the recycling directive, as I believe it is known, as it applies to internet telephony at an earlier date?

What is the Minister's understanding of why some countries want the provisions to be mandatory and not optional?

The Information Commissioner plays a role in policing access arrangements as far as the British Government are concerned. Will he have a similar role when the information is derived from overseas providers? Given that we are now talking about a Europe-wide system, will the Information Commissioner's remit run to any call that originates or ends in the United Kingdom? That would seem necessary for our protection. Has the Minister yet discussed that issue with his counterparts in other member states and with the Commission? It would be helpful to have this information.

Lord Bassam of Brighton: My Lords, I am very grateful to both noble Lords for their support for the regulations and for the intelligence of their questions. I am not sure that I can answer all their very important questions this evening. I shall endeavour to respond to them in due course in writing.

The noble Lord, Lord Henley, asked for more clarification on the internet aspects of the issue. It is clear from our early engagement with the industry that we need additional time to develop the

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implementation of the directive on internet-related communications. That consultation indicated the additional complexity associated with it. As I made plain, or certainly alluded to, some thought needs to be given to the technical resourcing issues, which may take time to resolve. We will have to return to that issue.

The existence of the voluntary code of practice under the Anti-terrorism, Crime and Security Act 2001 will enable some early work on the retention of communications data to proceed. That will of course inform our understanding of how best to complete the transposition of the directive. That is part of the explanation of why we need to return to that issue.

The noble Lord was also concerned about the funding arrangement for data retention. The regulations make provision to continue with the established UK policy of reimbursing public communications providers that incur expenditure from adjusting their business practices to comply with government requirements. I understand that we are budgeting some £6 million annually to meet appropriate data retention and associated data retrieval costs. Our approach to reimbursement is to ensure that communications data retention is cost-neutral to industry. We do not want to benefit one data provider against another so that the market is skewed.

We are making appropriate contributions to costs incurred by providers and where they undertake to retain data for extended periods. In practice, these contributions cover 100 per cent of costs. That does not mean that every provider is being funded, because some already retain this data for their own purposes.

The noble Lord, Lord Henley, asked why Regulation 10 states that reimbursement "may" be made? The use of "may" rather than "shall" is necessary to ensure that, where there is potentially duplicative storage of communications data, the Secretary of State can take measures to ensure that data is retained in the most efficient manner. There is no intention to avoid reimbursement of additional costs incurred by public communications providers. That is why that terminology is used. I hope that that helps.

The noble Lord, Lord Dholakia, asked for more information. Other member states have legislated for internet data. We will obviously watch their experience with interest. We can gain knowledge and understanding from it. The Government are participating actively with the European Commission on issues relating to implementation, particularly to ensure consistency of approach and of interpretation. But we will look at these issues where communication is international.

The other points the noble Lord, Lord Dholakia, made require further reflection and perhaps a more detailed response. I shall quickly look at this note I have been handed to see whether I can provide some of them. He asked whether we were maintaining or adopting a voluntary regime. The directive is mandatory; the voluntary regime was, I suppose you might say, a British pragmatic approach and solution in its time. Providers want some legal certainty, which

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the mandatory regime provides. In some ways it is understandable that the industry wants that. It does not want to be forever hanging on to a voluntary code, asking "Does it mean this?", "Does it mean that?", "Do we have to do that?" or "Are we obliged to provide that?". It helps to provide a level playing field across the industry. That is of benefit to all.

If I have missed something—I have struggled not to—I shall endeavour to provide a note for both noble Lords who have contributed to the debate. I think that I have covered most of the main issues. I am grateful to both noble Lords for their support.

On Question, Motion agreed to.

Verification of Information in Passport Applications Etc. (Specified Persons) Order 2007

7.28 pm

Lord Bassam of Brighton rose to move, That the draft order laid before the House on 28 June be approved.

The noble Lord said: My Lords, the purpose of this order is simply to ensure that there is sufficient information available to confirm the identity of passport applicants.

The order is being made under Section 38 of the Identity Cards Act 2006, as passports are currently issued under the royal prerogative. Section 38 was included in the Identity Cards Act to establish a power to require information to be provided to verify information in, or in connection with, a passport