

News story

Forthcoming consultation on our response to the CJEU judgment on data retention

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We will shortly launch a public consultation on the government's response to the Court of Justice of the European Union (CJEU) judgment on data retention.



Communications data is the 'who', 'where', 'when', 'how' and 'with whom' of a communication, but not what was written or said. It includes information such as the subscriber to a telephone service and the IP address someone is allocated when they connect to the internet. Telecommunications or postal operators may be required by the Secretary of State to retain this data where it is considered necessary and proportionate to do so for one of the statutory purposes set out in the Investigatory Powers Act (IPA). Specified public authorities, including the police and the security and intelligence agencies, may then acquire the retained communications data, where it is necessary and proportionate to do so, from an operator.

The acquisition of communications data is an essential tool for the full range of law enforcement activity and national security investigations. It is used to investigate crime, keep children safe, support or disprove alibis and tie a suspect to a particular crime scene, amongst many other things. Sometimes communications data is the only way to identify offenders, particularly where offences are committed online, such as child sexual exploitation and fraud.

On 21 December 2016 the Court of Justice of the European Union handed down its judgment in a challenge to the UK's legislation governing data retention, the Data Retention and Investigatory Powers Act 2014 (DRIPA). The judgment set out the safeguards that need to be in place in order for a data retention regime to be consistent with EU law. DRIPA has since been replaced by Part 4 of IPA and the government accepts that amendments will be required to the IPA in response to the judgment.

The government will shortly be launching a consultation on its proposed response to the judgment. Given the importance of communications data to preventing and detecting crime, the proposed response is intended to ensure that the police and other public authorities can continue to acquire such data in a way that is consistent with EU law and our obligation to protect the public. At the same time, the government will consult on the draft statutory code of practice on communications data, to be issued under the IPA. The consultation and associated documents will be available on GOV.UK (https://www.gov.uk/government/publications?departments%5B%5D=home-office&publication_filter_option=consultations) soon. The following documents provide useful background ahead of the launch of the consultation:

- The Investigatory Powers Act (<http://www.legislation.gov.uk/ukpga/2016/25/contents/enacted>)
- the Court of Justice of the European Union judgment (<http://curia.europa.eu/juris/document/document.jsf?docid=186492&doclang=EN>)
- Data Retention and Investigatory Powers Act (<http://www.legislation.gov.uk/ukpga/2014/27/contents>)
- current communications data draft code (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/557862/IP_Bill_-_Draft_CD_code_of_practice.pdf) published alongside Investigatory Powers Act

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