

EXPLANATORY MEMORANDUM

Retention of Communications Data (Code of Practice) Order 2003

European Convention on Human Rights

In the view of the Parliamentary Under Secretary of State for the Home Department, Caroline Flint, the provisions of the above Order are compatible with the Convention Rights.

Powers exercised

The above instrument is made in exercise of the powers conferred by section 103(5) of the Anti-Terrorism, Crime and Security Act (2001) (ATCSA). It cannot have effect until it is approved by resolution of each House of Parliament.

Legislative background

Part 11 section 102(1) of ATCSA allows the Secretary of State to issue codes of practice relating to the retention of communications data for extended periods of time. The voluntary Code of Practice on the retention of communications data relates to the retention of communications data by the communications service providers. Section 102(5) of ATCSA provides that such a code is admissible as evidence in any legal proceedings in which the question arises whether or not the retention of any communications data is justified. However by virtue of section 102(4), a person's failure to comply with a code of practice issued under section 103(5) shall not in itself render them liable to criminal or civil proceedings.

Section 103(2) requires that before a draft code of practice issued under Part 11 of ATCSA is published consultation shall take place with the Information Commissioner and the communications providers. This consultation has been conducted and lasted from January of 2002 to February 2003. Further section 103(1) requires that before the code is published the Secretary of State shall consider any representations made to him about the draft. Public consultation in respect of the voluntary retention of communications data Code of Practice has been conducted, and lasted from 11 March 2003 to 3 June 2003. The results of this are obtainable from the Home Office web site.

Policy background

This code of practice covers the provisions contained in Part 11 of ATCSA on retention of communication data. Part 11 outlines the process for publication of the code. This may contain any such provisions as considered necessary by the Secretary of State for the purpose of safeguarding national security; or the prevention or detection of crime or the prosecution of offenders which may relate directly or indirectly to national security.

The code sets out the procedures to be followed, jurisdiction and types of communications service providers to be covered, data types and retention periods.

Financial effects

Section 106 (1) of ATCSA outlines the duty of the Secretary of State to ensure that appropriate arrangements are in force for the making of appropriate contributions towards the costs incurred by the communications service providers. These costs would relate to those incurred to comply with the code, agreement or direction given under Part 11 or as a consequence of the retention of any communications data in accordance with such provisions. Section 106(2) indicates that in complying with his duty the Secretary of State may make arrangements for the payments to be made out of money provided by Parliament.

Jurisdiction

This instrument applies to the United Kingdom.