Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

ELECTRONIC COMMUNICATIONS

The Data Retention (EC Directive) Regulations 2007

Made - - - -	***
Coming into force - -	*1st October 2007*

The Secretary of State, being a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in respect of matters relating to electronic communications, in exercise of the powers conferred upon him by that section, makes the following Regulations (a draft of which has been approved by each House of Parliament):

Citation and commencement

1. These Regulations may be cited as the Data Retention (EC Directive) Regulations 2007 and shall come into force on 1st October 2007.

Interpretation

2. In these Regulations—

(a) "cell ID" means the identity or location label of the cell from which a mobile telephony call was made or received;

(b) "data" means traffic data and location data, as defined in paragraph (g), and the related data necessary to identify the subscriber and the registered user;

(c) "personal data" has the meaning given in section 1 of the Data Protection Act 1998(**3**);

(d) "public communications provider" means:

(i) a provider of a public electronic communications network; or

(ii) a provider of a public electronic communications service;

(**1**) S.I.2001/3495.
(**2**) 1972 c. 68.
(**3**) 1998 c. 29; section 1 was amended by the Freedom of Information Act 2000 (c. 36), section 68(1), (2) and (3) and Schedule 8, Part III and by S.I. 2004/3089.

(e) 'public electronic communications network' and 'public electronic communications service' have the meaning given in section 151 of the Communications Act 2003(**4**);

(f) "telephone service" means calls (including voice, voicemail and conference and data calls), supplementary services (including call forwarding and call transfer) and messaging and multi-media services (including short message services, enhanced media services and multi-media services);

(g) 'traffic data' and 'location data' have the meaning given in regulation 2 of the Privacy and Electronic Communications (EC Directive) Regulations 2003(**5**);

(h) "unsuccessful call attempt" means a communication where a telephone call has been successfully connected but not answered or there has been a network management intervention.

Application

3.—(1) Subject to paragraph (2), these Regulations shall apply to all public communications providers.

(2) These Regulations shall not apply, except where written notice has been given by the Secretary of State, to a public communications provider whose data are retained in the United Kingdom in accordance with these Regulations by another public communications provider.

(3) If only a part of that data is so retained by another public communications provider, these Regulations apply to the public communications provider only with respect to the data not so retained.

(4) A written notice must be given or published in such a manner as the Secretary of State considers appropriate for bringing it to the attention of the public communications provider or the category of providers to whom it applies and must specify the extent to which and the date from which these Regulations are to apply.

Obligation to retain data

4.—(1) Subject to paragraphs (4) and (5), the data specified in regulation 5 must be retained to the extent that those data are generated or processed by a public communications provider in the process of supplying the communications services concerned.

(2) The data specified in regulation 5 are to be retained by the public communications provider for a period of 12 months from the date of the communication.

(3) The duty to retain data under paragraph (1) includes the retention of the data specified in regulation 5 relating to an unsuccessful call attempt where those data are generated or processed, and stored, in the United Kingdom by a public communications provider in the process of supplying the communication services concerned.

(4) These Regulations do not require data relating to unconnected calls to be retained.

(5) These Regulations do not require data derived from Internet access, Internet e-mail or Internet telephony to be retained.

Data to be retained

5.—(1) The following data concerning fixed network telephony and mobile telephony generated in the United Kingdom must be retained in accordance with regulation 4(1):

(**4**) 2003 c. 21.
(**5**) S.I. 2003/2426.