



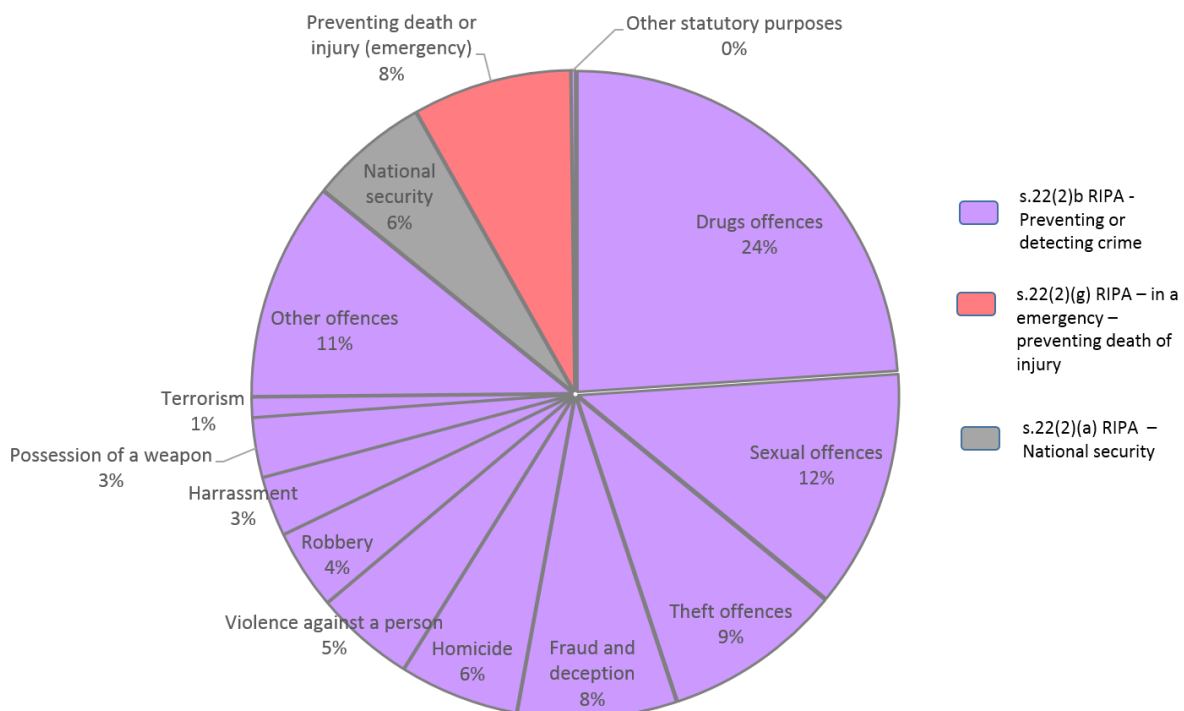
Communications Data – Government response to European Court Ruling

Key points

- Communications data is the ‘who’, ‘where’, ‘when’, ‘how’ and ‘with whom’ of a communication, but not what was written or said.
- Communications data is an essential tool for law enforcement and national security investigations. It is used to investigate crime, keep children safe, support or disprove alibis and link a suspect to a particular crime scene, amongst many other purposes.
- On 21 December 2016 the Court of Justice of the European Union (CJEU) handed down its judgment in two cases, including a reference from the Court of Appeal relating to a challenge to the UK’s then legislation governing data retention. The CJEU’s judgment set out requirements that need to be in place for a communications data retention regime to be considered compliant with EU law.
- The Government has given careful consideration to the judgment and we are now consulting on proposed new safeguards to ensure we comply with the judgment while still allowing the police to use communications data to solve crimes, catch paedophiles and protect the public.

Background

- The Investigatory Powers Act 2016 provides that the Secretary of State may require telecommunications and postal operators to retain communications data, for up to 12 months, where it is necessary and proportionate to do so, and where that decision has been approved by a Judicial Commissioner. Specified public authorities, including the police and intelligence agencies, may acquire communications data from a telecommunications or postal operator where it is necessary and proportionate to do so, for purposes specified in the legislation.
- Communications data is used in 95% of serious and organised crime investigations handled by the Crown Prosecution Service and it has played a significant role in every Security Service counter terrorism operation over the last decade.
- Law enforcement has engaged with over 700 telecommunications and postal operators in the past two years, less than 25 of these are or have ever been subject to a data retention notice.
- In 2015, 761,702 items of data were acquired by public and local authorities, 85.8% of which was for the statutory purpose of preventing or detecting crime or of preventing disorder.





Communications Data – Government response to European Court Ruling

The Government's proposed response to the December 2016 ruling of the Court of Justice of the European Union regarding the retention of communications data?

- On 21 December 2016 the Court of Justice of the European Union (CJEU) handed down its judgment in two cases, including a reference from the Court of Appeal relating to a challenge to the UK's then legislation governing data retention. The CJEU's judgment set out requirements that need to be in place for a communications data retention regime to be considered compliant with EU law. The judgment made clear that it was for national courts to consider how these safeguards should be applied to domestic legislation.
- The Government has given careful consideration to the judgment and we are now consulting on proposed new safeguards to ensure we comply with the judgment while still allowing the police to use communications data to solve crimes, catch paedophiles and protect the public.
- The new proposals include:
 - The introduction of independent authorisation of communications data requests by a new body, known as the Office for Communications Data Authorisations, under the Investigatory Powers Commissioner Lord Justice Fulford. This body will be responsible for authorising the vast majority of communications data requests.
 - Restricting the use of more intrusive communications data to investigations into serious crime.
 - Additional safeguards which must be taken into account before a Data Retention Notice can be given to a telecommunications operator.
 - Clarification in the code of practice of when notification of those whose communications data has been accessed can occur.
 - Additional guidance in the code of practice on the protection of retained data in line with European data protection standards.
- The Government is clear that the December 2016 judgment does not apply to the retention or acquisition of data for national security purposes as national security is outside of the scope of EU law.
- The changes will be made via affirmative regulations under section 2(2) of the European Communities Act which exists to allow legislation to be amended to respond to a European requirement, as in this case, and via a new statutory Code of Practice on which we are also consulting.
- The Code of Practice provides guidance on the procedures to be followed by telecommunications and postal operators when retaining and disclosing communication data and public authorities when seeking to acquire it. The code was last published in draft during the passage of the Investigatory Powers Act.
- In addition to the changes made to the code to reflect the new proposals set out above, the code has also been updated to provide additional guidance on definitions of a telecommunications operator and to provide additional guidance on internet communications data.
- Following the consultation, proposals will be brought forward to Parliament to debate and vote on.