

You'd think that we
understood it all by now!

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Lots of Statutory Instruments

- Voluntary scheme for ATCS Data Retention
- Extension of ATCS Part 11 “sunset clause”
- Additional Authorities for Part I Chapter II
 - the police forces they forgot
 - and all the other authorities
- & Intrusive & Directed Surveillance Orders
 - RIP Part II and traditionally overlooked !

Emergency legislation?

14	Dec	2001	+000	ATCS Royal Assent
22	Jan	2002	+039	CSPs meet Home Office
27	Feb	2002	+075	CSP “lawyers” meet HO
2	Mar	2002	+078	Draft 1 of Code of Practice
18	Apr	2002	+125	Draft 2 of Code of Practice
26	Jun	2002	+194	Change of personnel at HO
29	Jul	2002	+227	Draft 3 of Code of Practice

Emergency legislation?

9	Sep	2002	+269	CSPs meet with HO
4	Nov	2002	+325	“Technical Working Group”
7	Nov	2002	+328	Draft 4 of Code of Practice
30	Nov	2002	+351	Terms of Reference for TWG
9	Jan	2003	+391	Code of Practice finalised
27	Feb	2003	+440	Last meeting of TWG
11	Mar	2003	+452	Public consultation starts

Emergency legislation?

3 Jun 2003	+536	Public Consultation closes
11 Sep 2003	+636	Summary published
11 Sep 2003	+636	SIs laid before Parliament

BUT: 40 more days + 3? voluntary months comes to one month more than two years! OOPS!!

And in 100 days...

Q: what's different from 11th March (or indeed from the Code of Practice of the 9th January) ?

A: they've fixed the labelling of Appendix D

- And is the whole scheme lawful ?
- Do we know how the response to the voluntary code is to be assessed ?
- Do we know what percentage take-up by CSPs is sufficient in different sectors ?
- Do we know what it will cost ?
- How much will the Government pay ?

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Turning on Part I Chapter II

- Telcos & ISPs entirely in favour
 - sweeps away “s29(3)” forms & gives certainty
- BUT there’s still no Code of Practice
 - the Home Office ran Part I Chapter I without a Code of Practice for 637 days: 00/10/02--02/07/01
- and the ACPO Manual of Standards remains private
 - to avoid “confusion” -- pending any revisions

Extra authorities

- Public outcry in June 2002
 - “parish councils to view emails”
- Revised proposals in September 2003
 - same list except remove Department of Work & Pensions (they have legacy legislation)
 - and three more added ! (the Charity Commission, the Serious Fraud Office and the Gaming Board for Great Britain)

But aren't there restrictions?

- Yes indeed
 - many are restricted to only category (b) or category (c) data
- Restriction of purpose and signers
 - but for councils it's the Assistant Chief Officer (or Service Manager) or a boss who signs...
 - so can “Planning” make out a necessary & proportionate case, or maybe “Housing” ??

What about these categories?

- 21(4)(a) is “traffic data”
 - details of to and from
- 21(4)(b) is “usage data”
 - details of usage of a system
- 21(4)(c) is “subscriber data”
 - other info held by the telco/ISP

But...

- Is dialled number “traffic data” or “usage”
 - Home Office documents vary in answer
 - as do Press Releases from new authorities
 - spooks claim call direction is the differentiator
- What of category (c) [everyone gets this]
 - definition is anything that’s not traffic or usage
 - so is the PIN to your voicemail included?

Summary

- ATCS used up its time in 100 day chunks
- The extra authorities “rethink” is essentially the same again, but better presented
- All those pesky a/b/c definitions now matter
- but we still don't have a Code of Practice for access to Communications Data

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