

Press release

Minister McEntee commences Act to facilitate retention of data to protect national security and tackle serious crime

From [Department of Justice \(/en/organisation/department-of-justice/\)](/en/organisation/department-of-justice/)

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The Minister for Justice, Helen McEntee T.D. has today signed an order to bring into operation provisions of the Communications (Retention of Data) (Amendment) Act 2022 from 26th June 2023.

The Act provides that general and indiscriminate retention of communications traffic and location data is permissible on national security grounds, where approved by a designated judge.

The Act also introduces a system of preservation and production orders to facilitate preservation of, and access to, specified communications data held by service providers for national security purposes and for the investigation of serious crime where permitted by an authorising judge.

A Preservation Order will act as a “quick freeze” requiring service providers to retain any specified data that they hold at a particular point in time for a period.

A Production Order will allow access to specified data held by a service provider for commercial or other reasons, where such access is necessary for national security or law enforcement purposes.

The effect of a Production Order will be that a service provider must immediately take steps to produce and disclose to the relevant State agency the data described in the order made by an authorised judge.

Both traffic and location data retained for national security purposes and user data, retained for national security or law enforcement purposes, will be retained for 12 months.

Minister McEntee said:

“The commencement of this Act will bring legal certainty for communications service providers and state agencies on what obligations apply to the retention of communications data which is vital for law enforcement and national security purposes.”

“An Garda Síochána have a vital role to play in keeping us all safe, in investigating criminals and ensuring justice is done. As I have said before An Garda Síochána and our other agencies must be fully equipped with strong laws and modern technology to do their job. We cannot have an analogue police service in a digital age. The commencement of this Act will help in that while also ensuring that people’s rights are not subject to unnecessary or disproportionate interference.”

" I want to acknowledge the engagement over the past year by service providers and their representative bodies, our State agencies and the Courts Service in putting the necessary arrangements in place to get us to this point."

The commenced provisions apply to An Garda Síochána, the Permanent Defence Forces, the Garda Síochána Ombudsman Commission and the Office of the Revenue Commissioners. The provisions of the Act in relation to the Competition and Consumer Protection Commission will be commenced at a later date.

The Justice Plan 2023 includes a commitment to initiate policy work on further consolidated legislation in this area.

Notes

The Communications (Retention of Data) (Amendment) Act 2022 was enacted to provide legal certainty in light of important European Court of Justice rulings in this area.

In respect of national security, the Act provides that the Minister for Justice must first carry out an assessment of threats to the security of the State.

If the Minister deems the threat to be such as would require the retention of traffic and location data, referred to in the Act as “Schedule 2 data”, he or she may apply to a designated judge of the High Court for an order requiring service providers to retain that data.

Access to that data will require prior judicial authorisation, or in urgent circumstances, approval by a senior officer of An Garda Síochána or the Defence Forces.

Use of the urgency procedure must be notified to an authorising judge who will review whether the urgency procedure was appropriate.

“Preservation Orders” will require the preservation of specified data in connection with specific persons, locations or other indicators (for example, mobile phone numbers). A Preservation Order will not in itself require the granting of access to data.

“Production Orders” will require the gathering and submission of specified data in a person’s possession or control to An Garda Síochána and other agencies, and may include data which may already be the subject of a Preservation Order.

Under the Act a Preservation Order may be obtained by An Garda Síochána*, the Defence Forces, the Revenue Commissioners or the Competition and Consumer Protection Commission for defined reasons where approved by an authorised judge, including the need to respond to serious offences, national security and the saving of a human life. All 4 agencies can access data under the 2011 Act.

A Production Order is a court authorised means of accessing limited and specified data, where it is required in the context of a criminal investigation. Under the Act, a Production Order, may be obtained by An Garda Síochána*, the Defence Forces, the Revenue Commissioners or the Competition and Consumer Protection Commission for defined reasons where approved by an authorised judge.

The Communications (Retention of Data)(Amendment) Act 2022 (Commencement) Order 2023 brings the Act into operation with effect from 26 June 2023 in respect of An Garda Síochána, the Permanent Defence Forces, the Garda Síochána Ombudsman Commission* and the Office of the Revenue Commissioners. The provisions of the Act in relation to the Competition and Consumer Protection Commission will be commenced in the coming months.

- Section 98 of the Garda Síochána Act 2005 (as amended) provides designated officers of GSOC with equivalent powers to members of An Garda Síochána for the purposes of investigations within its remit. As such, GSOC has equivalent powers to seek the disclosure of data and to seek preservation and production orders, in relation to the investigation of crime.

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