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STATUTORY INSTRUMENTS

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**2018 No. 341 (C. 28)**

**INVESTIGATORY POWERS**

**The Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018**

*Made* - - - - *8th March 2018*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 270(2) and 272(1) of the Investigatory Powers Act 2016<sup>(1)</sup>.

**Citation and interpretation**

1.—(1) These Regulations may be cited as the Investigatory Powers Act 2016 (Commencement No. 4 and Transitional and Saving Provisions) Regulations 2018.

(2) In these Regulations—

“RIPA” means the Regulation of Investigatory Powers Act 2000<sup>(2)</sup>;

“the 2016 Act” means the Investigatory Powers Act 2016.

**The appointed day**

2. The following provisions of the 2016 Act come into force on 12th March 2018—

(a) section 2 (general duties in relation to privacy) so far as it applies to decisions relating to notices under section 252 or 253 of the 2016 Act;

(b) in section 229 (main oversight functions)—

(i) subsection (1) (main oversight functions) so far as it relates to the exercise of statutory functions relating to equipment interference which are exercised in relation to a notice under section 253 of the 2016 Act (technical capability notices);

(ii) subsection (3) so far as it relates to paragraph (b) (oversight of the giving and operation of national security notices);

(iii) subsection (8) so far as it relates to—

(aa) paragraph (e)(i) so far as that paragraph applies to the giving or varying of a notice under section 252 or 253 of the 2016 Act;

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(1) 2016 c. 25.

(2) 2000 c. 23.

- (bb) paragraph (e)(ii) so far as that paragraph applies to the giving of a notice under section 257(9)(b) of the 2016 Act, and
- (cc) paragraph (f) so far as that paragraph applies to participating in a review under section 257 of the 2016 Act;
- (c) in section 243 (functions of the Tribunal in relation to this Act etc.)—
  - (i) subsection (1)(c) so far as it omits section 65(5)(c) of RIPA and inserts paragraphs—
    - (aa) (czb), (czc), (czi), (czj), (czl)(iii), and
    - (bb) (czm) so far as it applies to conduct falling within paragraphs (czb) and (czi);
  - (ii) subsection (1)(h) so far as inserted subsection (7ZB) of section 65 of RIPA applies to conduct which is, or purports to be, conduct falling within subsection (5)(czc), (czj) and (czl)(iii) of that section;
  - (iii) subsection (1)(i), so far as it omits section 65(8)(a) and (b) and inserts paragraph (bc);
  - (iv) subsection (2)(a), so far as it inserts paragraphs (aza) so far as that paragraph relates to an order quashing or cancelling a retention notice under Part 4 of RIPA and (azc);
  - (v) subsection (3);
  - (vi) subsection (4);
  - (vii) subsection (5)(b) and (c), and
  - (viii) subsection (6);
- (d) section 245 (Technical Advisory Board);
- (e) section 249 (payments toward certain compliance costs), for the purposes of the payment of a contribution in respect of costs incurred, or likely to be incurred, in complying with a notice under section 252 or 253 of the 2016 Act;
- (f) section 252 (national security notices);
- (g) section 253 (technical capability notices) so far as not already in force;
- (h) section 254 (approval of notices by Judicial Commissioners);
- (i) section 255 (further provision about notices under section 252 or 253);
- (j) section 256 (variation and revocation of notices);
- (k) section 257 (review of notices by the Secretary of State);
- (l) section 258 (approval of notices following review under section 257);
- (m) section 271(1) (Schedule 10: minor and consequential provision) so far as relating to the provisions coming into force by virtue of sub-paragraphs (n) to (q);
- (n) paragraph 45 of Schedule 10 (repeal of Chapter 1 of Part 1 of RIPA) so far as it omits the following provisions of RIPA—
  - (i) section 12(3) (maintenance of interception capability);
  - (ii) section 13 (Technical Advisory Board), and
  - (iii) section 14(2)(c) (grants for interception costs in consequence of the imposition of obligations under section 12);
- (o) paragraph 48 of Schedule 10 (consequential amendment to section 78 of RIPA(4));

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(3) Section 12 was amended by section 4(6) and (7) of the Data Retention and Investigatory Powers Act 2014 (c. 27). Those amendments continue to have effect by virtue of paragraph 9 of Schedule 9 to the 2016 Act.

(4) There are amendments to section 78 not relevant to these Regulations.

- (p) paragraph 99 of Schedule 10 (repeal of section 94 of the Telecommunications Act 1984<sup>(5)</sup>) except to the extent that a direction under section 94 of the Telecommunications Act 1984 may impose requirements relating to the acquisition of communications data in bulk, and
- (q) paragraph 100 of Schedule 10 (amendment of paragraph 17 of Schedule 2 to the Northern Ireland Act 1998<sup>(6)</sup>).

### **Saving provision regarding section 12 notices**

- 3. Despite the repeal of sections 12 and 14(2)(c) of RIPA (interception capability and costs) –
  - (a) a notice given under section 12 of RIPA which is in force immediately before 12th March 2018 continues to have effect until 12th September 2018 unless withdrawn earlier,
  - (b) section 12(1) to (4), (7), (8), (11) and (12) of RIPA, and any order made under subsection (1) of that section, continues to have effect for the purpose of any notices which continue to have effect in consequence of paragraph (a), and
  - (c) section 14(2)(c) continues to have effect in relation to obligations imposed by a notice which continues to have effect in consequence of subparagraph (a).

### **Saving provision regarding section 94 directions**

4.—(1) A direction given under section 94 of the Telecommunications Act 1984 which does not impose requirements relating to the acquisition of communications data in bulk and which is in force immediately before 12th March 2018 continues to have effect until 12th September 2018 unless revoked earlier.

(2) Section 94 of the Telecommunications Act 1984 continues to have effect for the purpose of any direction which continues to have effect in consequence of paragraph (1).

### **Transitional provision regarding the implementation of warrants**

5. Until the repeal of section 11(7) of RIPA (implementation of warrants) by paragraph 45 of Schedule 10 to the Act is fully in force, section 11(6) of RIPA has effect as if after “section 12” there were inserted “or a technical capability notice given under section 253 of the Investigatory Powers Act 2016”.

### **Transitional provision regarding technical capability notices**

- 6.—(1) Until section 19(1) of the 2016 comes into force for all purposes—
  - (a) section 253(3) of the 2016 Act has effect as if in the definition of “relevant authorisation”, before paragraph (a) there were inserted—
    - “(za) any warrant issued under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000,” and
  - (b) section 255(11) of the 2016 Act has effect as if before paragraph (a) there were inserted—
    - “(za) a warrant issued under Chapter 1 of Part 1 of the Regulation of Investigatory Powers Act 2000;”.

(2) Until section 102(1) of the 2016 Act comes into force for all purposes, section 253(3) of the 2016 Act has effect as if in the definition of “relevant authorisation”—

- (a) in paragraph (a) “or” were omitted, and

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(5) 2003 c. 21; section 94 was amended by paragraph 70 of Schedule 17 to the Communications Act 2003 (c. 21).

(6) 1998 c. 47; paragraph 17 was amended by paragraph 9 of Schedule 4 to the Regulation of Investigatory Powers Act 2000.

(7) Section 11 was amended by section 4(2) to (5) of the Data Retention and Investigatory Powers Act 2014 (c. 27). Those amendments continue to have effect by virtue of paragraph 9 of Schedule 9 to the 2016 Act.

(b) after paragraph (a) there were inserted—

“(aa) any warrant issued under section 5 of the Intelligence Services Act 1994<sup>(8)</sup>, to extent that the warrant authorises conduct to which the prohibition in section 13(1) would apply were that section in force, or”.

### **Transitional provisions regarding functions of the Tribunal**

7.—(1) Until the repeal of Chapter 1 of Part 1 of RIPA by paragraph 45 of Schedule 10 to the 2016 Act is fully in force, section 65(8)<sup>(9)</sup> of RIPA (the Tribunal) has effect as if before paragraph (a) there were inserted—

“(za) an interception warrant;”.

(2) Until the repeal of Chapter 2 of Part 1 of RIPA by paragraph 54 of Schedule 10 to the 2016 Act is fully in force—

(a) section 65 of RIPA has effect as if—

(i) in subsection (5), after paragraph (b) there were inserted—

“(bb) conduct to which Chapter 2 of Part 1 of this Act applies;” and

(ii) in subsection (8), after paragraph (a) there were inserted—

“(aa) an authorisation or notice under Chapter 2 of Part 1 of this Act;” and

(b) section 68(7) of RIPA<sup>(10)</sup> (persons required to provide or disclose documents and information to the Tribunal) has effect as if for paragraphs (g) and (h) there were substituted—

“(g) every person by or to whom an authorisation under section 22(3) or (3B) has been granted;

(h) every person to whom a notice under section 22(4) has been given;”.

(3) Paragraph (4) applies where the Tribunal exercises the jurisdiction conferred on them by or under section 65 of RIPA, or otherwise exercises or performs any power or duty conferred or imposed on them under RIPA, in relation to conduct taking place before 12th September 2018.

(4) Where this paragraph applies, section 68(7) of RIPA has effect as if for “section 252 or 253 of that Act” there were substituted “section 12 of this Act or section 252 or 253 of the Investigatory Powers Act 2016.”

8th March 2018

*Ben Wallace*  
Minister of State  
Home Office

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<sup>(8)</sup> 1994 c. 13. Section 5 was amended by section 2 of the Intelligence Services Act 1996 (c. 35) and section 74(1) and (2) of the Regulation of Investigatory Powers Act 2000.

<sup>(9)</sup> There are amendments to section 65 not relevant to these Regulations.

<sup>(10)</sup> Section 68(7) was amended by S.I. 2013/602. There are other amendments not relevant to these Regulations.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force provisions in the Investigatory Powers Act 2016 (c. 25) (“the 2016 Act”) relating to the giving of national security notices and technical capability notices.

A national security notice is a notice given by the Secretary of State under section 252 of the 2016 Act requiring a telecommunications operator in the United Kingdom to take such specified steps as the Secretary of State considers necessary in the interests of national security. A technical capability notice is a notice given by the Secretary of State under section 253 of the 2016 Act imposing obligations on a postal or telecommunications operator for the purpose of securing that the operator is able to provide assistance in relation to certain warrants and authorisations under the 2016 Act.

Regulation 2 brings into force provisions of the 2016 Act providing for the giving of national security notices and technical capability notices by the Secretary of State, approval by Judicial Commissioners of the decision to give a notice, and the processes for review, variation and cancellation of notices. Regulation 2 also brings into force provisions relating to oversight of national security notices and technical capability notices by the Investigatory Powers Commissioner and amendments to the Regulation of Investigatory Powers Act 2000 (c. 23) (“RIPA”) giving the Investigatory Powers Tribunal jurisdiction in relation to such notices.

Technical capability notices replace, in part, notices under section 12 of RIPA. Regulation 3 provides that, despite section 12 of RIPA being repealed, existing section 12 notices continue to have effect for a transitional period. In addition, regulations 5 and 6(1) provide that for a transitional period the technical capability regime can be used to require operators to maintain the capability to provide assistance in relation to RIPA interception warrants.

Technical capability notices may require an operator to maintain the capability to provide assistance in relation to equipment interference warrants. For a transitional period, until the power of the Secretary of State to issue equipment interference warrants comes into force, regulation 6(2) provides that technical capability notices may be given for the purpose of requiring an operator to maintain the capability to give effect to warrants under section 5 of the Intelligence Services Act 1995 (c. 13) (“ISA”) but only to the extent that a warrant under section 5 of ISA authorises conduct that will not, when section 13(1) of the 2016 Act is in force, be capable of being authorised by a warrant under section 5 of ISA.

National security notices replace, in part, the power to give directions under section 94 of the Telecommunications Act 1984 (c. 12). Section 94 is therefore repealed, but not to the extent that such directions may impose requirements relating to the acquisition of communications data in bulk. That use of section 94 directions will be replaced by Chapter 2 of Part 6 of the 2016 Act, which is not yet in force. To the extent that section 94 is repealed, regulation 4 provides that existing directions continue to have effect for a transitional period.

Regulation 7 provides that despite the amendments made to the jurisdiction of the Investigatory Powers Tribunal, the Tribunal will continue to have jurisdiction over functions of public authorities exercised under RIPA while the relevant provisions of RIPA remain in force. Regulation 7 provides that where the Investigatory Powers Tribunal is dealing with conduct taking place before 12th September 2018, the duty to provide the Tribunal with documents and information continues to apply to any person on whom an obligation has been imposed under a section 12 notice.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

*(This note is not part of the Regulations)*

The following provisions of the Investigatory Powers Act 2016 (c. 25) have been brought into force by commencement regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1	13.02.17	2017/137(11)
Section 2 (partially)	30.12.16	2016/1233
Section 15(6) (partially)	01.09.17	2017/859
Section 16(4) to (6) (partially)	01.09.17	2017/859
Section 60(1) (partially)	13.02.17	2017/137
Section 61(7) (partially)	30.12.16	2016/1233
Section 87, except subsection (1)(b)	30.12.16	2016/1233
Section 88	30.12.16	2016/1233
Section 90(13)	30.12.16	2016/1233
Section 92	30.12.16	2016/1233
Section 93	30.12.16	2016/1233
Section 94 (partially)	30.12.16	2016/1233
Section 95	30.12.16	2016/1233
Section 97	30.12.16	2016/1233
Section 98	30.12.16	2016/1233
Section 199 (partially)	01.09.17	2017/859
Section 229 (partially)	13.02.17	2017/137
Section 229 (partially)	01.09.17	2017/859
Section 230	13.02.17	2017/137
Section 232	13.02.17	2017/137
Section 233(1) (partially)	13.02.17	2017/137
Section 233 (remainder)	01.09.17	2017/859
Section 234(1), (2)(g) to (i) and (3) to (9)	13.02.17	2017/137
Section 234(2)(a) to (c) and (f), (10) and (11)	01.09.17	2017/859
Section 235(1) to (4) and (7)	13.02.17	2017/137
Section 235(5)	01.09.17	2017/859
Section 236	01.09.17	2017/859

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(11) Amended by S.I. 2017/143.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 237	13.02.17	2017/137
Section 238, except subsection (6)(b) and (c)	13.02.17	2017/137
Section 239	13.02.17	2017/137
Section 240	01.09.17	2017/859
Section 241	13.02.17	2017/137
Section 244	30.12.16	2016/1233
Section 246	13.02.17	2017/137
Section 247	13.02.17	2017/137
Section 249 (partially)	30.12.16	2016/1233
Section 250	13.02.17	2017/137
Section 251	13.02.17	2017/137
Section 253(3) to (6)	13.02.17	2017/137
Section 270 (partially)	30.12.16	2016/1233
Section 271 (partially)	30.12.16	2016/1233
Schedule 7	13.02.17	2017/137
Schedule 9, paragraphs 3, 4, 5, 8 and 9	30.12.16	2016/1233
Schedule 10, paragraph 63	30.12.16	2016/1233
Schedule 10, paragraphs 67, 69 and 71 to 98	01.09.17	2017/859
Schedule 10, Part 8 (partially)	30.12.16	2016/1233