
STATUTORY INSTRUMENTS

2020 No. 1245

The Network and Information Systems (Amendment and Transitional Provision etc.) Regulations 2020

Amendments to regulation 16 (power of inspection)

12. In regulation 16—

(a) in paragraph (1)—

- (i) for the opening text substitute “The designated competent authority for an OES may —”;
- (ii) in each of sub-paragraphs (a) and (b), after “conduct” insert “all or any part of”;
- (iii) after sub-paragraph (b) omit “or”;
- (iv) in sub-paragraph (c), after “conduct” insert “all or any part of”;
- (v) omit the closing text;

(b) in paragraph (2)—

- (i) in each of sub-paragraphs (a) and (b), after “conduct” insert “all or any part of”;
- (ii) after sub-paragraph (b) omit “or”;
- (iii) in sub-paragraph (c), after “conduct” insert “all or any part of”;
- (iv) omit the closing text;

(c) in paragraph (3)—

- (i) at the end of sub-paragraph (a), insert “if so required by the relevant competent authority or the Information Commissioner”;
- (ii) in sub-paragraph (b), for the words from “person” to the end substitute “inspector”;
- (iii) in sub-paragraph (c)—
 - (aa) omit “reasonable”; and
 - (bb) at the end, insert “in accordance with paragraph (5)(a)”;
- (iv) for sub-paragraph (d) and “and” after that sub-paragraph substitute—
 - “(d) allow the inspector to examine, print, copy or remove any document or information, and examine or remove any material or equipment, in accordance with paragraph (5)(d);”;
- (v) after sub-paragraph (e), insert—
 - “(f) not intentionally obstruct an inspector performing their functions under these Regulations; and
 - (g) comply with any request made by, or requirement of, an inspector performing their functions under these Regulations.”;

(d) in paragraph (4)—

- (i) after “The”, insert “relevant”;
- (ii) for “carry out” substitute “conduct all or any part of”;

- (e) after paragraph (4), insert—
- “(5) An inspector may—
- (a) at any reasonable time enter the premises of an OES or RDSP (except any premises used wholly or mainly as a private dwelling) if the inspector has reasonable grounds to believe that entry to those premises may be necessary or helpful for the purpose of the inspection;
 - (b) require an OES or RDSP to leave undisturbed and not to dispose of, render inaccessible or alter in any way any material, document, information, in whatever form and wherever it is held (including where it is held remotely), or equipment which is, or which the inspector considers to be, relevant for such period as is, or as the inspector considers to be, necessary for the purposes of the inspection;
 - (c) require an OES or RDSP to produce and provide the inspector with access, for the purposes of the inspection, to any such material, document, information or equipment which is, or which the inspector considers to be, relevant to the inspection, either immediately or within such period as the inspector may specify;
 - (d) examine, print, copy or remove any document or information, and examine or remove any material or equipment (including for the purposes of printing or copying any document or information) which is, or which the inspector considers to be, relevant for such period as is, or as the inspector considers to be, necessary for the purposes of the inspection;
 - (e) take a statement or statements from any person;
 - (f) conduct, or direct the OES or RDSP to conduct, tests;
 - (g) take any other action that the inspector considers appropriate and reasonably required for the purposes of the inspection.
- (6) The inspector must—
- (a) produce proof of the inspector’s identity if requested by any person present at the premises; and
 - (b) take appropriate and proportionate measures to ensure that any material, document, information or equipment removed in accordance with paragraph (5)(d) is kept secure from unauthorised access, interference and physical damage.
- (7) Before exercising any power under paragraph (5)(b) to (d) or (g), the inspector—
- (a) must take such measures as appear to the inspector appropriate and proportionate to ensure that the ability of the OES or RDSP, as the case may be, to comply with any duty set out in these Regulations will not be affected; and
 - (b) may consult such persons as appear to the inspector appropriate for the purpose of ascertaining the risks, if any, there may be in doing anything which the inspector proposes to do under that power.
- (8) Where under paragraph (5)(d) an inspector removes any document, material or equipment, the inspector must provide, to the extent practicable, a notice giving—
- (a) sufficient particulars of that document, material or equipment for it to be identifiable; and
 - (b) details of any procedures in relation to the handling or return of the document, material or equipment.
- (9) In this regulation—

- (a) a reference to a “test” is a reference to any process which is—
 - (i) employed to verify assertions about the security of a network or information system; and
 - (ii) based on interacting with that system, including components of that system,and includes the exercising of any relevant security or resilience management process;
- (b) “inspection” means any activity carried out (including any steps mentioned in paragraph (5)) for the purpose of—
 - (i) verifying compliance with the requirements of these Regulations; or
 - (ii) assessing or gathering evidence of potential or alleged failures to comply with the requirements of these Regulations,including any necessary follow-up activity for either purpose;
- (c) “inspector” means any person conducting all or any part of an inspection in accordance with paragraph (1) or (2).”.