



Investigatory Powers Act 2016

2016 CHAPTER 25

PART 4

RETENTION OF COMMUNICATIONS DATA

Safeguards

88 Matters to be taken into account before giving retention notices

- (1) Before giving a retention notice [^{F1}, including in relation to one or more of the purposes mentioned in sub-paragraphs (i) to (vi) of section 87(1)(a) (purposes for which retention of communications data may be required)], the Secretary of State must, among other matters, take into account—
 - (a) the likely benefits of the notice,
 - [^{F2}(aa) the telecommunications services to which the retention notice relates,
 - (ab) the appropriateness of limiting the data to be retained by reference to—
 - (i) location, or
 - (ii) descriptions of persons to whom telecommunications services are provided,]
 - (b) the likely number of users (if known) of any telecommunications service to which the notice relates,
 - (c) the technical feasibility of complying with the notice,
 - (d) the likely cost of complying with the notice, and
 - (e) any other effect of the notice on the telecommunications operator (or description of operators) to whom it relates.
- (2) Before giving such a notice, the Secretary of State must take reasonable steps to consult any operator to whom it relates.

Status: Point in time view as at 09/12/2021. This version of this cross heading contains provisions that are prospective.
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Textual Amendments

- F1** Words in s. 88(1)(a) inserted (1.11.2018) by [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), regs. 1(3)(c), **9(a)**
- F2** S. 88(1)(aa)(ab) inserted (1.11.2018) by [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), regs. 1(3)(c), **9(b)**

Commencement Information

- I1** S. 88 in force at 30.12.2016 by [S.I. 2016/1233](#), **reg. 2(d)**

PROSPECTIVE

89 Approval of retention notices by Judicial Commissioners

- (1) In deciding whether to approve a decision to give a retention notice, a Judicial Commissioner must review the Secretary of State's conclusions as to whether the requirement to be imposed by the notice to retain relevant communications data is necessary and proportionate for one or more of the purposes falling within [^{F3}sub-paragraphs (i) to (vi) of section 87(1)(a)].
- (2) In doing so, the Judicial Commissioner must—
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Judicial Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where a Judicial Commissioner refuses to approve a decision to give a retention notice, the Judicial Commissioner must give the Secretary of State written reasons for the refusal.
- (4) Where a Judicial Commissioner, other than the Investigatory Powers Commissioner, refuses to approve a decision to give a retention notice, the Secretary of State may ask the Investigatory Powers Commissioner to decide whether to approve the decision to give the notice.

Textual Amendments

- F3** Words in s. 89(1) substituted (1.11.2018) by [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), reg. 1(3)(f), **Sch. 1 para. 22(a)**

90 Review by the Secretary of State

- (1) A telecommunications operator to whom a retention notice is given may, within such period or circumstances as may be provided for by regulations made by the Secretary of State, refer the notice back to the Secretary of State.
- (2) Such a reference may be in relation to the whole of a notice or any aspect of it.
- (3) In the case of a notice given to a description of operators—

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- (a) each operator falling within that description may make a reference under subsection (1), but
 - (b) each such reference may only be in relation to the notice, or aspect of the notice, so far as it applies to that operator.
- (4) There is no requirement for an operator who has referred a retention notice under subsection (1) to comply with the notice, so far as referred, until the Secretary of State has reviewed the notice in accordance with subsection (5).
- (5) The Secretary of State must review any notice so far as referred to the Secretary of State under subsection (1).
- (6) Before deciding the review, the Secretary of State must consult—
 - (a) the Technical Advisory Board, and
 - (b) a Judicial Commissioner.
- (7) The Board must consider the technical requirements and the financial consequences, for the operator who has made the reference, of the notice so far as referred.
- (8) The Commissioner must consider whether the notice so far as referred is proportionate.
- (9) The Board and the Commissioner must—
 - (a) give the operator concerned and the Secretary of State the opportunity to provide evidence, or make representations, to them before reaching their conclusions, and
 - (b) report their conclusions to—
 - (i) the operator, and
 - (ii) the Secretary of State.
- (10) The Secretary of State may, after considering the conclusions of the Board and the Commissioner—
 - (a) vary or revoke the retention notice under section 94, or
 - (b) give a notice under this section to the operator concerned confirming its effect.
- (11) But the Secretary of State may vary the notice, or give a notice under subsection (10)
 - (b) confirming its effect, only if the Secretary of State's decision to do so has been approved by the Investigatory Powers Commissioner.
- (12) A report or notice under this section is given to an operator by giving or publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of the operator.
- (13) The Secretary of State must keep a retention notice under review (whether or not referred under subsection (1)).

Commencement Information

- I2** S. 90(1)-(12) in force at 1.11.2018 by S.I. 2018/873, reg. 4(a)
- I3** S. 90(13) in force at 30.12.2016 by S.I. 2016/1233, reg. 2(e)

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91 Approval of notices following review under section 90

- (1) In deciding whether to approve a decision to vary a retention notice as mentioned in section 90(10)(a), or to give a notice under section 90(10)(b) confirming the effect of a retention notice, the Investigatory Powers Commissioner must review the Secretary of State's conclusions as to whether the requirement to be imposed by the notice as varied or confirmed to retain relevant communications data is necessary and proportionate for one or more of the purposes falling within [F4 sub-paragraphs (i) to (vi) of section 87(1)(a)].
- (2) In doing so, the Investigatory Powers Commissioner must—
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care as to ensure that the Investigatory Powers Commissioner complies with the duties imposed by section 2 (general duties in relation to privacy).
- (3) Where the Investigatory Powers Commissioner refuses to approve a decision to vary a retention notice as mentioned in section 90(10)(a), or to give a notice under section 90(10)(b) confirming the effect of a retention notice, the Investigatory Powers Commissioner must give the Secretary of State written reasons for the refusal.

Textual Amendments

F4 Words in s. 91(1) substituted (1.11.2018) by [The Data Retention and Acquisition Regulations 2018 \(S.I. 2018/1123\)](#), reg. 1(3)(f), [Sch. 1 para. 22\(b\)](#)

Commencement Information

I4 S. 91 in force at 1.11.2018 by [S.I. 2018/873](#), [reg. 4\(a\)](#)

92 Data integrity and security

- (1) A telecommunications operator who retains relevant communications data by virtue of this Part must—
 - (a) secure that the data is of the same integrity, and subject to at least the same security and protection, as the data on any system from which it is derived,
 - (b) secure, by appropriate technical and organisational measures, that the data can be accessed only by specially authorised personnel, and
 - (c) protect, by appropriate technical and organisational measures, the data against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful retention, processing, access or disclosure.
- (2) A telecommunications operator who retains relevant communications data by virtue of this Part must destroy the data if the retention of the data ceases to be authorised by virtue of this Part and is not otherwise authorised by law.
- (3) The destruction of the data may take place at such monthly or shorter intervals as appear to the operator to be practicable.

Commencement Information

I5 S. 92 in force at 30.12.2016 by [S.I. 2016/1233](#), [reg. 2\(f\)](#)

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93 Disclosure of retained data

A telecommunications operator must put in place adequate security systems (including technical and organisational measures) governing access to relevant communications data retained by virtue of this Part in order to protect against any unlawful disclosure.

Commencement Information

I6 [S. 93](#) in force at 30.12.2016 by [S.I. 2016/1233](#), [reg. 2\(g\)](#)

Status:

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