



Investigatory Powers (Amendment) Act 2024

2024 CHAPTER 9

PART 4

NOTICES

Retention, national security and technical capability notices

18 Review of notices by the Secretary of State

- (1) The Investigatory Powers Act 2016 is amended as follows.
- (2) In section 90 (retention notices: review by the Secretary of State)—
 - (a) for subsection (4) substitute—
 - “(4) Where a telecommunications operator refers a retention notice under subsection (1)—
 - (a) there is no requirement for the operator to comply with the notice, so far as referred, and
 - (b) subsection (4A) applies to the operator,until the Secretary of State has reviewed the notice in accordance with subsection (5).
 - (4A) Where this subsection applies to a telecommunications operator, the operator must not make any relevant changes to telecommunications services or telecommunication systems to which obligations imposed by the retention notice relate.
 - (4B) In subsection (4A) “relevant change” means a change that, if implemented, would have a negative effect on the capability of the operator to provide any assistance which the operator may be required to provide in relation to any warrant, authorisation or notice issued or given under this Act.”;

Status: This is the original version (as it was originally enacted).

- (b) in subsection (5)—
 - (i) after “must” insert “, before the end of the review period.”;
 - (ii) after “(1)” insert “(and accordingly decide what action to take under subsection (10))”;
- (c) after subsection (5) insert—
 - “(5A) In subsection (5) “the review period” means—
 - (a) such period as may be provided for by regulations made by the Secretary of State, or
 - (b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (14)), such extended period.”;
- (d) after subsection (9) insert—
 - “(9A) The Commissioner may give a direction to the operator concerned or the Secretary of State specifying the period within which the operator or the Secretary of State (as the case may be) may provide evidence, or make representations, in accordance with subsection (9)(a).
 - (9B) If the Commissioner gives such a direction to the operator or the Secretary of State, the Board and the Commissioner are not required to take into account any evidence provided, or representations made, by the operator or the Secretary of State (as the case may be) after the end of that period.”;
- (e) in subsection (10)—
 - (i) for “may” substitute “must”;
 - (ii) after “Commissioner” insert “but before the end of the relevant period, decide whether to”;
- (f) after subsection (11) insert—
 - “(11A) In subsection (10) “the relevant period” means—
 - (a) such period as may be provided for by regulations made by the Secretary of State, or
 - (b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (15)), such extended period.”;
- (g) after subsection (13) insert—
 - “(14) Regulations under subsection (5A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State where the extension is agreed by the Secretary of State, the telecommunications operator concerned and a Judicial Commissioner.
 - (15) Regulations under subsection (11A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State—
 - (a) where the Secretary of State considers that there are exceptional circumstances that justify the extension, or
 - (b) in any other circumstances specified in the regulations.

Status: This is the original version (as it was originally enacted).

- (16) Where regulations under subsection (11A)(a) include provision mentioned in subsection (15), the regulations must also include provision requiring the Secretary of State to notify a Judicial Commissioner and the telecommunications operator concerned of the duration of any extended period.”
- (3) In section 95(5) (enforcement of retention notices etc), after “or (2)” insert “, or under section 90(4A),”.
- (4) In section 255(10) (enforcement of national security notices and technical capability notices), in the opening words, for “subsection (9)” substitute “subsection (8) or (9), or by section 257(3A),”.
- (5) In section 257 (national security notices and technical capability notices: review by the Secretary of State)—
- (a) for subsection (3) substitute—
- “(3) Where a person who is given a notice under section 252 or 253 refers the notice under subsection (1)—
- (a) there is no requirement for the person to comply with the notice, so far as referred, and
- (b) subsection (3A) applies to the person,
- until the Secretary of State has reviewed the notice in accordance with subsection (4).
- (3A) Where this subsection applies to a person, the person must not make any relevant changes to telecommunications or postal services, or telecommunication systems, to which obligations imposed by the notice given under section 252 or 253 relate.
- (3B) In subsection (3A) “relevant change” means a change that, if implemented, would have a negative effect on the capability of the person to provide any assistance which the person may be required to provide in relation to any warrant, authorisation or notice issued or given under this Act.”;
- (b) in subsection (4)—
- (i) after “must” insert “, before the end of the review period,”;
- (ii) after “(1)” insert “(and accordingly decide what action to take under subsection (9))”;
- (c) after subsection (4) insert—
- “(4A) In subsection (4) “the review period” means—
- (a) such period as may be provided for by regulations made by the Secretary of State, or
- (b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (13)), such extended period.”;
- (d) after subsection (8) insert—
- “(8A) The Commissioner may give a direction to the person concerned or the Secretary of State specifying the period within which the person or the Secretary of State (as the case may be) may provide evidence, or make representations, in accordance with subsection (8)(a).

Status: This is the original version (as it was originally enacted).

- (8B) If the Commissioner gives such a direction to the person or the Secretary of State, the Board and the Commissioner are not required to take into account any evidence provided, or representations made, by the person or the Secretary of State (as the case may be) after the end of that period.”;
- (e) in subsection (9)—
- (i) for “may” substitute “must”;
 - (ii) after “Commissioner” insert “but before the end of the relevant period, decide whether to”;
- (f) after subsection (10) insert—
- “(10A) In subsection (9) “the relevant period” means—
- (a) such period as may be provided for by regulations made by the Secretary of State, or
 - (b) if that period is extended by the Secretary of State in accordance with the regulations (see subsection (14)), such extended period.”;
- (g) after subsection (12) insert—
- “(13) Regulations under subsection (4A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State where the extension is agreed by the Secretary of State, the person concerned and a Judicial Commissioner.
- (14) Regulations under subsection (10A)(a) may include provision enabling any period provided for by the regulations to be extended by the Secretary of State—
- (a) where the Secretary of State considers that there are exceptional circumstances that justify the extension, or
 - (b) in any other circumstances specified in the regulations.
- (15) Where regulations under subsection (10A)(a) include provision mentioned in subsection (14), the regulations must also include provision requiring the Secretary of State to notify a Judicial Commissioner and the person concerned of the duration of any extended period.”
- (6) In section 267(3) (regulations: affirmative procedure)—
- (a) in paragraph (e), after “90(1)” insert “, (5A)(a) or (11A)(a)”;
 - (b) in paragraph (j), after “257(1)” insert “, (4A)(a) or (10A)(a)”.