
STATUTORY INSTRUMENTS

2016 No. 1233 (C. 85)

INVESTIGATORY POWERS

The Investigatory Powers Act 2016 (Commencement
No. 1 and Transitional Provisions) Regulations 2016

Made - - - - 15th December 2016

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⁽¹⁾.

Citation and interpretation

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

(2) In these Regulations “the 2016 Act” means the Investigatory Powers Act 2016.

Appointed Day

2. The following provisions of the 2016 Act come into force on 30th December 2016—
- (a) section 2 (general duties in relation to privacy), so far as it applies to Part 4;
 - (b) paragraphs (a) to (j) of section 61(7) (purposes for which communications data may be obtained), for the purpose of the operation of sections 87 and 94;
 - (c) section 87 (powers to require retention of certain data), except subsection (1)(b);
 - (d) section 88 (matters to be taken into account before giving retention notices);
 - (e) section 90(13) (duty to keep a retention notice under review);
 - (f) section 92 (data integrity and security);
 - (g) section 93 (disclosure of retained data);
 - (h) section 94(1) to (3), (4)(a), (5) and (7) (variation or revocation of notices);
 - (i) section 94(8) except in so far as it applies to section 94(4)(b);
 - (j) section 94(9), (11) so far as it applies to section 90(13), and (13) to (16);
 - (k) section 95 (enforcement of notices and certain other requirements and restrictions);
 - (l) section 97 (extra-territorial application of Part 4);
 - (m) section 98 (Part 4: interpretation);

- (n) section 244 (oversight by Information Commissioner in relation to Part 4);
- (o) section 249 (payments towards 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 Part 4 and the purposes of paragraph 3 of Schedule 9 (transitional, transitory and saving provision) only;
- (p) paragraphs 3 to 5, 8 and 9 of Schedule 9, and section 270(1) so far as it relates to those paragraphs;
- (q) paragraph 63 of Schedule 10 (minor and consequential provisions), and section 271(1) so far as it relates to that paragraph;
- (r) in Part 8 of Schedule 10, the repeals relating to sections 21 and 52(3)(a) of the Counter-Terrorism and Security Act 2015⁽²⁾, and section 271(1) so far as it relates to those repeals.

Modification of the Data Retention Regulations 2014

3. In its continued operation by virtue of paragraph 5(1) of Schedule 9 to the 2016 Act, regulation 15 of the Data Retention Regulations 2014⁽³⁾ has effect subject to the following modifications—

- (a) regulation 15(5) has effect as if regulation 7 of those Regulations continues to have effect;
- (b) regulation 15(7) is omitted.

15th December 2016

Ben Wallace
Minister of State
Home Office

(2) 2015 c.6.
(3) S.I 2014/2042.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first commencement regulations made under the Investigatory Powers Act 2016 (c.25) (“the 2016 Act”).

Regulation 2 brings into force provisions of the 2016 Act relating to the retention of communications data. Part 4 of the 2016 Act gives the Secretary of State power to give a notice requiring the retention of communications data, including internet connection records (“a retention notice”). Oversight by the Information Commissioner of retained communications data and provision for reimbursement of the costs of telecommunications operators are also commenced.

The provisions of Part 4 requiring approval by the Investigatory Powers Commissioner of the decision of the Secretary of State to give or vary a retention notice are not commenced, as the Commissioner has not yet been appointed. Similarly, the provisions for requesting a review of a retention notice, which include a role for the Commissioner, are not commenced. Schedule 9 of the 2016 Act provides that any retention notice given or varied without the approval of the Commissioner ceases to have effect 3 months after the date on which the requirement for Commissioner approval comes into force.

Regulation 2 also brings into force the repeal of sections 1 and 2 of the Data Retention and Investigatory Powers Act 2014 (c.27) (“the 2014 Act”), which provide for communications data retention. Schedule 9 of the 2016 Act provides that a retention notice given under the 2014 Act continues to have effect for a period of 6 months from the 30th December (“the transitional period”) as if it were a notice given under Part 4 of the 2016 Act. Schedule 9 to the 2016 Act also provides that the amendments made by sections 3 to 6 of the 2014 Act to the Regulation of Investigatory Powers Act 2000 continue to have effect until the relevant provisions of the Regulation of Investigatory Powers Act 2000 are repealed by the 2016 Act.

Regulation 3 modifies regulation 15 of the Data Retention Regulations 2014 (S.I. 2014/2042) which, by virtue of paragraph 5(1) of Schedule 9 to the 2016 Act, has continued effect during the transitional period.